













# Administration of Monopolies Opium And Salt



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## ADMINISTRATION OF MONOPOLIES. OPIUM AND SALT.

(Secret.—Salt, Opium, &c.)

No. 1.

ADMINISTRATION  
OF MONOPOLIES.

Opium.

DESPATCH from the Secret Committee of the Directors of the East-India Company to the Right Honourable the Governor-General in Council, at Fort William, in Bengal, dated 10th May 1816.

Para. 1. OUR last Despatch from this Department was dated the 30th April 1816.

2. We are now about to reply to the Letter addressed by Mr. Secretary Trotter to our late Secretary, dated the 26th July 1814, transmitting copy of your correspondence with the Acting Resident at Fort Marlborough and the Company's Advocate-General, on the subject of Opium.

3. The revenue derived from Opium and Salt which, at different times, has been realized by different means, has always been of so great importance that we entirely approve of the attention which you have paid to this subject. It certainly never was the intention of the Legislature, in opening the trade with India to the public at large, to endanger a revenue of about £2,000,000 sterling per annum.

4. The interpretation given by Mr. Stowell to the 6th section of the 53d Geo. II. c. 155, in his letter of the 19th July 1814, is confirmed by the opinion of the high legal authorities in this country, we are advised by the above-mentioned authorities we cannot, consistently with the provisions of the Act above referred to, prohibit importation of Turkey Opium into our territories; but that it is competent to impose such a duty on the importation of Opium, as shall protect the revenue from that article against the injury which it would sustain from the supply of article of foreign growth, at the present rate of duty.

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5. Under the provision contained in the 53d George III. c. 155, s. 25, all regulation for imposing any new or additional duties upon the export, import or transit of goods in the Company's territories framed in India, must be transmitted for the approbation and sanction of the authorities at home, previously to their promulgation. We accordingly direct you forthwith to prepare and transmit to us a regulation, imposing such a duty on the importation of foreign Opium into any of the Ports and Settlements under your Presidency, as shall operate as a protection to our Opium Revenue, by which regulation it should be provided that the Merchants shall be at liberty to deposit such Opium in the warehouses of the Government, previously to the payment of the duty; but that no such Opium shall be removed from thence until the duty be paid.

6. The price of the best Turkey Opium in the London market is at present 13s. per lb. free of duty; and under the Bonding Act, it may be imported here, and afterward exported without paying any duty.

7. It being quite clear that the China Trade is reserved exclusively to the Company by virtue of the 53d George III. c. 155, s. 2, no British subject can trade thither without the license of the Company in its commercial capacity. The Company have therefore an indubitable right to withhold a license to carry Turkey Opium, or any other article to China.

8. The 54th George III. c. 34, s. 2, has reserved to the Government in India the power to frame such regulations, provisions and restrictions for the conduct of the trade from port to port in India, as may from time to time be deemed expedient so that the importation and exportation of Opium in the country trade may be legally interdicted.

9. It is not in our power to prevent, nor can the British Legislature prevent Turkey Opium from being carried to the Eastern Isles and to China, because though the trade in that article were altogether prohibited to British subjects, it would still be open to foreign nations to engage in it. We desire, however, that you will watch the progress and course of this trade, and report to us from time to time your information and sentiments respecting it.

10. Under the 53d George III. c. 155, s. 6, Salt may be legally exported from this country to India; and as any of His Majesty's subjects proceeding in ships navigated according to law upon a voyage to the East-Indies, are permitted by the 54th George III. c. 34, to touch and trade at the Cape de Verd Islands, where Salt may be procured at a very low price, we think it necessary to instruct you to take immediate measures for the protection of our Salt Revenue. With this view, we direct that you will lose no time in preparing and transmitting home for our sanction, a regulation imposing such a rate of duty on the importation of all foreign Salt, as shall have the effect of securing the revenue derived from that article. By which regulation it should be provided, that the merchants shall be at liberty to deposit such Salt in the warehouses of the Government, previously to the payment of the Duty, but that no such Salt shall be removed from thence, until the duty be paid.

11. We desire that in framing both the Opium and Salt Regulations, you will consult your law-officers, with the view of preventing any legal difficulties in the way of their obtaining the sanction of the authorities in this country.

12. We fully rely on your active and zealous co-operation, on an occasion where the public interests are so deeply concerned, and trust that you will lose no time in carrying our directions into effect.

We are, your affectionate friends,

(Signed) THOMAS REID.  
JOHN BARR.

East-India House, London,  
10th May 1816.

P.S. Copy of a Circular Letter to the Government of Fort St. George, Bombay and Prince of Wales' Island, on the subject of the foregoing Despatch, is sent a number in the packet.

(Signed) T. R. J. B.

No. 2.

To the Honourable the Secret Committee of the Honourable the Court of Directors, for Affairs of the Honourable the United Company of Merchants of England trading to the East-Indies.

Honourable Sirs :

Territorial Department, 11 October 1816.

We have the honour to acknowledge the receipt of your Despatch, under date the 10th May last, communicating your sentiments on the means possessed by the Honourable Company and their several Indian Governments of guarding the revenue derived from the exclusive manufacture and sale of Salt and Opium, and conveying your directions that we should prepare and transmit to you Regulations imposing such duty on the importation of Foreign Salt and Opium, as shall have the effect of securing the revenue derived from those articles.

2. On the receipt of your Honourable Committee's Despatch, we lost no time in communicating with our Advocate General on the subject, and we have now the honour to transmit, for the sanction of the Honourable Court, and the approbation of the Board of Control, Drafts of regulations prepared for the above purpose, in conformity with your directions.

3 Your Honourable Committee will observe, that the rate of duty imposed on the importation of these articles, is higher than what might appear requisite with reference merely to the prices at which merchants trading direct from England could afford to import them respectively.

4. We deem it therefore proper to explain that our Advocate General, Mr. Strettell, entertains great doubts of the authority of your Indian Governments, or of the Honourable Court, to interdict the importation and exportation of Opium in the country trade, an authority which, in the 8th paragraph of your Despatch, you state to be possessed by them.

5. Mr. Strettell's sentiments on this subject will hereafter be more fully communicated to you when the Report which we expect from that officer shall have been received. In the meantime, it has appeared to us advisable that such a duty be imposed on the importation of Salt and Opium as shall secure the exclusive trade in those articles from all interference whatsoever.



**Opium.**

6. We had anticipated the suggestion contained in the 7th paragraph of your Despatch, having already, on occasion of the importation at this Presidency of a quantity of Turkey Opium (to which we alluded in the 16th paragraph of our Financial Despatch of the 28th June last), given directions for inserting in the licenses to trade in China, a condition that such licence shall be void, in case any foreign or other Opium than Opium sold by the Company at their public sale in Bengal, be laden on board the ship in any part of the voyage, or be imported into China on board of it.

7. In that Despatch we intimated our intention not to renounce, without a decision of the Supreme Court, the right of this Government to bring the Opium imported here, to confiscation.

8. Under the communication, however, conveyed to us in your Honourable Committee's Despatch, we have judged it proper to forbear from the legal proceedings which we had determined to institute.

9. We entirely coincide in the opinion expressed by your Honourable Committee, that it never could have been the intention of the Legislature, in opening the trade with India to the public at large, to endanger so important a branch of our finances as that which is derived from the exclusive trade in Salt and Opium.

10. We feel scarcely less confident that the Legislature would not have hesitated to give its express sanction to those rules which have been enacted by the local Indian Governments for the regulation and security of those branches of our resources. The prosperity of the Revenue of India can hardly be considered as of less importance in a national point of view, than that of the more immediate resources of the Mother Country, and the jealousy under which the former system of Indian Government might have operated to prevent any legislative sanction being given to the exclusive trade in Opium and Salt can hardly be anticipated, when that trade is expressly separated from the commercial concerns of the Company, and its profits exclusively appropriated as a territorial branch of Revenue.

11. We, at the same time, deem it right to state to your Honourable Committee, that under the present system of the Indian Government, the revenue in question cannot be considered to be fully secured without some legislative sanction of the British Parliament, to the rules enacted in regard to it by the local Governments.

12. Your Honourable Committee will best be able to judge of the expediency of making application to Parliament for that purpose.

13. We shall transmit copies of the drafts of the Regulations which accompany this Despatch, to the Governments of Port St. George, Bombay, and Prince of Wales Island, who will of course frame, with reference to these drafts, their respective Regulations, introducing at the same time into the Rules enacted by them, such modifications as local circumstances may call for.

14. It will then, we think, be expedient that they should at once transmit the drafts of the Regulations prepared by them, for the sanction of the Honourable Court, and the approbation of the Board of Commissioners, without further reference to this Government.

15. By these means, the delay which must have resulted from a literal adherence to the course prescribed by your Honourable Committee, will be avoided; and at the same time any inconsistency in the measures of our respective Governments sufficiently guarded against.

16. At none of these Presidencies indeed does any exclusive manufacture or trade in Opium exist, so that the rules passed by these several Governments, as far as respects the importation of this article, will have for their object solely to secure from competition the Opium purchased at the Calcutta sales; but we are not aware that any material deviation from the course which we have pursued, will on that account be requisite.

17. On this principle we have prepared the accompanying Regulation, imposing such a duty on the importation of Opium, not being Bengal Opium, into any of the ports or places dependent on Fort Marlborough, as shall secure the Opium sold at the public sales in Calcutta from all competition at that place.

18. Your Honourable Committee are aware, that Regulations for Bencoolen have from time to time been enacted by this Government.

19. We think it proper, however, to notice, that having occasion to enquire into the circumstances in which that settlement stands in respect to the Supreme Government, some doubts have arisen in regard to its being in a strict legal sense, a factory subordinate to Bengal.

20. No trace can be found on our records, of any order, making the settlement of Fort Marlborough a factory subordinate to this Presidency, having been issued by the Honourable the Court of Directors, subsequent to the passing of chap. 29, of the 42d of the King, by which Act they were authorized to do so.

21. The Court having in fact carried the measure into effect before the passing of the Act above-mentioned, may have naturally omitted to issue any further directions on the subject subsequent to that date.

22. This defect in form might, however, throw some doubt over the validity of the Regulations passed by this Government, particularly one of the nature of that now transmitted.

23. But as it may, if necessary, be rectified by the Honourable Court, previously to their transmitting this Regulation again to Bengal, and as practically the question is but little likely to arise, we have not considered it as a sufficient reason for delaying the preparation and transmission of the Regulation.

24. With respect to Salt no Regulation, we believe, will be required either at Prince of Wales' Island or Fort Marlborough.

25. How far the different circumstances under which a revenue is drawn from Salt at Madras and Bombay, may render necessary, in the Rules framed in those Presidencies respectively, some deviation from the draft now framed by us, the Governments of those Presidencies will, of course, best be able to judge, and we do not conceive that any material advantage would result from a reference to this Government, on account of variations arising from such a cause.

We have the honour to be, Honourable Sirs,

Your most faithful humble servants,

(Signed)

MORA.

N. B. EDMONSTON.

ARCHIBALD SETON.

G. DOWDESWELL.

Fort William,  
11th October 1816.

No. 3.

To the Honourable the Court of Directors for Affairs of the Honourable the United Company of Merchants of England trading to the East Indies.

Separate Department, 20th February 1816.

Honourable Sirs:

THE last Letter to your Honourable Court in this Department was addressed to you by the Honourable the Vice-President in Council, under date the 7th October last.

2. With reference to the communication contained in paragraph 144 of the above-mentioned Despatch, we have now the honour to convey our sentiments on the question regarding the means best calculated for the improvement of the Department of Opium, as respecting the provision of the drug, the prevention of the illicit manufacture and sale of it, and the attainment of a revenue from the internal sale and consumption of the article.

3. Your Honourable Court will find inclosed a number in the packet, copies of a Letter received from the Board of Trade, dated the 28th July last, and of the Minute referred to in it, in reply to the reference made to them on the subject; also copies of the Minutes recorded on the occasion by Mr. Dowdeswell, the Honourable the Vice-President, and Mr. Seton.

4. Your Honourable Court will perceive, on perusal of the Minute of the Board above-mentioned, that the more prominent features of the plan suggested by them in answer to our reference, are reducible to the three following propositions; viz.\*

- 1st. That the agency of Behar be divided into two separate divisions, to be denominated respectively the Agency of North and South Behar, the river Ganges forming the boundary between the two agencies;
  - 2d. That the Southern Division, as much the larger of the two, be held by the present agent, and that the Northern Division be placed under the management of another covenanted servant; and,
  - 3dly. That the present assistant to the agent in Behar should remain attached to, and reside at the larger agency of Southern Behar, but that he should at the same time be subjected to the performance of occasional duties in North Behar, upon the requisition of the agent of that division.
5. After mature deliberation we observed to the Board, in answer to their Letter, that the plan submitted by them with a view to meet the important objects above noticed, merely provided that there should be two separate and independent agencies instead of one, and without further augmentation of the number of European Officers, that a single assistant might be subject to the call of both agents. But after weighing this plan with all the attention due to the judgment and experience of the Board, we could not anticipate any substantial advantage from the adoption of it.

6. Without entering into any discussion of the merits of the plan proposed, by the Honourable

Honourable the Vice-President in Council, under date the 7th of March, the Board appeared to have only suggested another, which seemed to resolve itself into little more than a mere division of labour and responsibility.

7. We remarked to the Board, that of the essential benefits arising from an authoritative superintendency over subordinate agents in other departments, Government had the most abundant proofs. In fact it is a practical principle which pervades the whole economy of human affairs, and that is the principle which it was proposed to introduce into the very important Department of the Opium.

8. In the plan recommended by the Board, however, that principle appeared to be lost sight of. It has never been urged that the business of the Sudder or principal Station was too heavy on the footing on which it was conducted; and even supposing that the division of the agency into two parts might afford the agents greater leisure to superintend the conduct of the business in the Sub-stations, the relief thus afforded would, it is conceived, be quite insufficient for the exercise of that active, vigilant and unremitted control which should pervade this branch of the business.

9. The object in view might, perhaps, to a certain extent have been attained, had the agency been divided into two equal, or nearly equal parts, but this was by no means the intention of two-thirds to the other. But, even supposing that the time and attention of the agents would be equally occupied at the Sudder Station, and at the Sub-stations, the management contemplated in the Minute of the Vice-President of which accompanied our separate general report, that part of the Board's plan which suggests that the agency should be divided, and subject to the authority of both agents, we obvious to require much illustration. If the plan is not to be restrained by the exertions of a single Opium Agent, we could not possibly anticipate any attention should be distracted by the jarring and conflicting instructions of two distinct and independent authorities.

10. The heavy expense to which the Government would be exposed by the adoption of the plan proposed by the Board on account of Public Buildings, formed another subject of consideration. It was admitted by the Board that the buildings attached to the Opium Department at Patna are the largest in the Agency; but though capacious, they are scarcely adequate to the purposes which are required. Hence a judgment may be in some degree formed of the extent to which Government would be subject, were a separate and independent agency established in North Behar.

11. Another objection arose likewise to the plan proposed by the Board, according to the data assumed, the allowances of the agent in the Northern Division of Behar, would amount to Rs. 28,661 per annum. This, or even less than this, might be sufficient for a person acting under the immediate directions and control of a local superior, but it was conceived to be insufficient for the head of an office entrusted with the discharge of functions of great pecuniary responsibility in a distant part of the country, and acting under no other control than what can be exercised by the Board of Trade at the Presidency; although

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although the Governor-General in Council fully concurred in the sentiments expressed in the Resolution of the Honourable the Vice-President in Council, regarding the scale of the agent's allowances, it is perfectly consistent with that opinion to observe, that the principal executive officers of this department should be paid with more than ordinary liberality.

12. On these and other grounds which might be urged, we were induced, after an attentive review of the whole of the proceedings recorded on the subject of the future management of the business of the Opium Department, to concur in the opinion expressed in the resolution of the 7th March, that the objects in view would be best promoted by the appointment of deputies or subordinate agents in North and South Behar respectively, whose primary duty should be to restrain illicit practices in the growth and vend of Opium in the different villages and factories. This duty demands, in addition to strict integrity, great mental and bodily activity. Any plan which does not provide for the discharge of it on a regular and permanent footing will, in our judgment, prove delusive; at the same time, we conceived it to be highly desirable that the officers employed in the Opium Department should be paid in the shape of commission, and of rewards on seizures, in order that, by combining the prospect of immediate advantage with the hopes of promotion, and the establishment of a high official character, Government might derive every possible benefit from the zeal, skill and activity of the new functionaries.

13. In communicating the foregoing resolutions to the Board of Trade, they were informed that in pursuance of the above explained, the following resolutions, founded on the Minute of the Vice-President in Council, under date the 7th of March, had been adopted, and that we requested them to prepare the necessary legislative provisions, and to submit the same to the Government as early as possible for the consideration of

That the duty of the agent shall be continued as heretofore, under the general authority of the

That the superintendence of the provision of Opium in the province of Behar be vested in an agent, aided by a deputy, in North and South Behar respectively, and by an assistant to be employed in the performance of such duty as the agent may judge necessary, either at the principal station, or at any of the subordinate factories.

That it shall be the duty of the deputies within the local limits established for the exercise of their duties, to make advances to the Ryots, for the manufacture of Opium, to superintend the receipt of the drug, to control the native establishments maintained within such limits, and especially to prevent the illicit culture of the Poppy, and the unauthorized manufacture and vend of Opium.

That it shall be the duty of the agent to furnish the Board of Trade with an Annual Report upon the state of the agency, founded on the information obtained from the deputy agents, and such local inquiries as he may deem it necessary to make in person.

That the commission of the superintendent shall be adjusted to such rate as may yield to him, including rewards on seizures, from 50,000 to 60,000 rupees per annum, and that the salary at present received by him shall be discontinued.

That

That the allowances of the two deputies shall be also paid in the manner above-mentioned, and be so fixed that they may receive as follows :

The first deputy from 18,000 to 24,000 rupees per annum ; and

The second ditto from 12,000 to 18,000 ditto ditto.

That the agent and deputies be authorised to receive such portions of the commission in advance, as they may respectively require for their current expenses, not exceeding, however, a moiety of the computed amount of such commission.

That the assistant shall be allowed 500 rupees per mensem, with the usual deputation allowances on his employment in the Mofussil.

That the Board enter, as soon as circumstances will permit, on a consideration of the large establishments at present maintained in the Opium Department, and that they report what retrenchments or modifications those establishments may appear to require for the conduct of the manufacture on account of Government, and for the prevention of illicit growth, manufacture and vend. That the Board shall, in like manner, report what part of those establishments should be placed under the orders of the agent and of his deputies respectively.

- That an agency be established (and be directed) for the provision of Opium exclusively on account of Government in the district of Rungpore, that such agency be united with the Office of the Commercial Resident at that Station, and that the Board report the rate of remuneration for his responsibility. That the Rungpore Agency be reserved exclusively for the consumption.

That the superintendence of the internal sale of Revenue, under rules similar to those which regulate the sale of spirituous liquors, intoxicating drugs, &c. ; and that the Board be instructed to co-operate with the Board of Revenue in the general regulation of the resources.

• 14. The Board has also been informed, that the rules for the conduct of the officers employed in managing the retail sale of the Opium, should clearly define that the object of Government, in interfering in the traffic, was more with a view to control the use of an article which is so prejudicial to the morals of the people, and to the interests of society in general, than with a desire of increasing the revenue by an extensive sale of it ; and that the superior means which Government will in future possess of regulating and restricting the retail sale of Opium, when compared with the immediate superintendence of its own officers will, it is hoped, not only suppress the illicit traffic in the article, which notoriously exists, but gradually reduce the excessive use of the drug, which is now known to prevail, the object of course being to confine the consumption of it to medicinal purposes.

That with a view to prevent the illicit manufacture and vend of Opium, those persons who may be detected in these practices shall be fined, and be imprisoned for a period of twelve months.

That in addition to the agent and his deputies, and the commercial residents at Ghazepore and Rungpore, it shall be the duty of all the collectors and deputy collectors of

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Customs, as well as of the superintendents of salt chokies, to assist in suppressing illicit traffic in Opium; and that all contraband Opium which may be seized, shall be valued at ten rupees per seer of eighty sicca weight, one-half of the amount of which shall be paid to the officers of Government, and the other half to the officers employed in the seizure.

15. It was at the same time intimated to the Board, that from the foregoing outline, they would observe that it was not at present intended to make any alteration with regard to the Opium agency established in the province of Benares, but that it would be a subject for future consideration, whether arrangements, analogous to those ordered to be established in Behar, should not be likewise extended to Ghazee pore. In the mean time we remarked that the communications received from Mr. Sweetland, were not calculated to impress Government with the belief that he possessed that minute and local knowledge of the state of the agency intrusted to his care, which was essential to the prevention of illicit culture, manufacture and sale; and that had he possessed such information, he would have experienced no difficulty in furnishing the sketch of the situation of his subordinate factories as required by the Board, in their Letter to him referred to in the fourth paragraph of their Minute; the Board were accordingly desired to repeat their application to the agent for a map of the description of that above noticed, and for such other local information as might appear to be best calculated to enable them to judge whether the business generally, in the Behar, was superintended with that active personal vigilance, by which the growth, manufacture and vend of the article, could be prevented.

16. It was further stated to the Board, that under the arrangements proposed to be established, we did not deem the extension of the Behar agency to Monghyr, as recommended by them in the nineteenth paragraph of their Minute, to be advisable; that the establishment of the Rangoon agency was founded, in a great measure, on the experienced difficulty, not to say impossibility, of preventing the growth of the poppy in that district: that its produce would probably be sufficient for the internal consumption of the country in general; and the produce of the provinces of Behar and Benares prove on the other hand, in all likelihood, fully sufficient for foreign sale under the present arrangements, and such as might be eventually established in the Ghazee pore agency. At all events, we remarked that the utmost circumspection should be observed in augmenting the supply, and that of course the revenue could only be improved, or even maintained at its present standard, by adapting the annual stock to the demand for it in the home and foreign markets respectively.

We have the honour to be,

Honourable Sirs,

Your most faithful humble Servants,

(Signed)

MOIRA.

N. B. EDMONSTONE.

ARCH. SETON.

G. DOWDSEWELL.

Fort William,  
20 February 1816.

EXTRACT Letter in the Separate Department, from the Court of Directors, to the Governor General in Council in Bengal, dated 24th October 1817

Para. 75. THE sentiments expressed in paragraphs 21 to 27 of our despatch from this department, dated the 18th September 1816, will have prepared you to expect our approbation of the measures adopted by you for the purpose of supplying, from the government stores, a quantity of opium for the internal consumption of the country. We wish it, at the same time, to be understood, that our sanction is given to those measures not with a view to the revenue which they may yield, but in the hope that they will tend to restrain the use of this pernicious drug; and that the regulations for the internal sale of it will be so framed as to prevent its introduction into districts where it is not used, and to limit its consumption in other places, as nearly as possible, to what may be absolutely necessary.

76. The provision of opium in Behar having been short in 1813 and 1814 of the supply required for exportation, we concur in the expediency of your having, in the first instance, appropriated to internal consumption the quantity of opium at your disposal, and the twenty-six muster chests which had been allowed for sale since 1797-8 in the Godowns at the Presidency.

77. With respect to the means of providing a future and permanent supply for internal consumption, we are of opinion that the principle ought to be invariably adhered to, not to introduce the culture of the poppy into any district where it has not hitherto obtained, but that the provision should be increased, either by improved management in those parts of the country where agencies are already established, or by the introduction of government agency into districts where the plant is known to be cultivated for the purposes of clandestine trade. In conformity with this principle, we entirely approve of your having rejected the proposition of the agent in Behar, to establish a factory at Monghyr, a district in which it does not appear that the poppy is cultivated. On the other hand, in authorizing the provision of opium to be revived in Rungpore, where every endeavour to prevent the illicit cultivation of the poppy has been stated to have proved ineffectual, the only object is (and it is surely a fair one) to substitute an allowed, instead of an illegal proceeding, to restrain an evil which cannot be repressed; to place under regulation a habit of indulgence from which the people cannot be wholly weaned, and to employ taxation less as an instrument of raising a revenue, than as a preservative of the health and morals of the community.

78. We regret the failure of the steps taken in 1815 by the commercial resident at Rungpore, for collecting the opium illicitly cultivated in that district and in Dinagapore. Although the cultivation of the poppy in those districts was estimated (probably much too highly) to have been carried to the extent of 10,000 begahs of land in that season, which ought to have yielded about 900 chests, or 1,800 maunds of opium, the whole



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quantity expected to be collected by Mr. G. Monckton did not exceed thirty maunds, and this was procured at the heavy expense of eighty rupees per maund.

79. We are satisfied, from a perusal of the papers now before us, as well as of those which accompanied your letters of the 23d June and 29th November 1814, that there is no occasion whatever to extend the poppy cultivation in the territories under your government, in order to procure a supply of opium completely adequate to purposes both of exportation and of internal consumption; but that your endeavours should be confined to the collection, on account of government, of the opium now manufactured, and which in part finds its way into consumption through illicit channels. Besides the large quantity of land which, as already noticed, is appropriated to the illicit cultivation of the poppy in Rungpore and Dinagpore, the agent in Behar estimates \* that there may be from 600 to 800 maunds annually smuggled from that province. In another letter, † the agent reports that the illicit cultivation of the poppy is carried on in the district of Purneah, to the extent of 700 or 800 beegahs in the course of the year. The agent at Benares also states, ‡ that though smuggling is not carried on to any considerable extent from that agency, yet that it is clandestinely conveyed in certain quantities down the Ganges to Dacca and Chittagong, and he describes it as a *growing mischief*. It was suggested, both by the agent in Behar, and the commercial resident in Rungpore, || to increase the fine, in cases where opium is smuggled, from four to eight rupees per seer. We see no objection to this increase, and to extending the period of imprisonment from six months to a year, in cases where the offenders are unable to pay the fine; but in regard to another proposition, namely, that the smugglers of opium should be confined in the Foundary instead of the Dewanny jail, we entirely agree in opinion with your Board of Trade, that no financial advantage derivable from such a measure could compensate for the evil of associating persons of this description with culprits imprisoned for heinous offences.

80. As connected with this branch of the subject, we cannot suffer to pass without notice the censurable proceeding of Mr. Philip Monckton, on the 23d December 1813, upon an application made to him by the agent in Behar, to dispose of complaints which had been for some time pending in the Zillah Court of Purneah, on account of the illicit cultivation of opium; and we desire that you will signify to Mr. Monckton our displeasure with his conduct on that occasion.

81. We have considered, with attention, the general arrangements reported in your letter of the 20th February 1816, to have been resolved on, after a good deal of discussion, for the purpose of improving the opium revenue. The opium provision in Behar has hitherto been conducted by an agent and assistant; the former of whom has received allowances averaging per annum .....

Rs. 80,112  
and the latter ..... 9,600

Making a total of ..... Rs. 89,712

82. The

\* Letter, dated November 21, 1814.

† Letter, dated April 26, 1815.

‡ Letters, dated May 11, and Dec. 27, 1815.

§ Letter, dated Nov. 21, 1814.

|| Letter, dated Aug. 23, 1815.

Opium.

82. The following are the most prominent features in the new arrangement, which was sketched in a minute of the Vice-President in Council, recorded on your consultations of the 28th March 1815, and finally agreed upon in September of that year: that the superintendence of the provision of opium in Behar shall be vested in an agent, aided by a deputy in North and South Behar respectively, and by an assistant, to be employed in the performance of such duty as the agent may judge necessary, either at the principal station or at any of the subordinate factories. It is proposed to reduce the agent's allowance from 50,000 to 60,000 rupees per annum; to fix the first deputy's allowances at from 18,000 to 24,000 rupees, those of the second deputy at from 12,000 to 18,000 rupees per annum, and to grant the assistant a salary of 500 rupees per mensem, with the usual deputation allowance when employed in the Mofussil. The superintendent and two deputies to be paid by a regulated commission: the same to be paid in the Behar and Benares agencies to be reserved exclusively for exportation, and that provided in Rungpore by the commercial resident, to be appropriated to internal sale and consumption, under regulations to be framed by the Board of Revenue, and executed under their superintendence. The commercial residents at Ghazepore and Rungpore, the collectors and deputy-collectors of the customs, and the superintendents of salt-chokies, as well as the opium agents and their deputies, to be required to assist in suppressing illicit traffic; and all contraband opium which may be seized to be sold at ten rupees per seer, and one-half the amount to be paid to the officers of government, and the other half to the officers employed in the seizure.

83. We are disposed, upon the whole, to approve of the general outline of the foregoing arrangement, which we think preferable to the plan suggested by the Board of Trade, of dividing Behar into two separate agencies, the adoption of which would have entailed a heavy expenditure in the erection of new buildings for the use of the opium department in North Behar.

84. As the high estimation in which the opium sold at our sales is now held, arises from its purity and the excellence of its quality, and as opium produced in Rungpore and other parts of Bengal is deemed of a quality inferior to that of Behar and Benares, great care must be taken that Bengal opium be not put into such a state that it may, in our own or foreign countries, be passed off as Behar or Benares opium. We therefore positively direct that the Bengal Opium be not made into cakes, but that instead thereof, it be put into pots or jars, and sold in that state, at a season of the year when poppy-leaves are not procurable; and you must make a regulation, declaring that if any person shall be detected making Bengal Opium into cakes, either with poppy-leaves or tobacco-leaves, or any other substance, the Opium found in such a state of preparation shall be seized and confiscated, and the offender be liable to adequate penalties.

85. After all, we must observe that it is our wish not to encourage the consumption of Opium, but rather to lessen the use, or, more properly speaking, the abuse of the drug; and for this end, as well as for the purpose of revenue, to make the price to the public, both in our own and in foreign dominions, as high as possible, having due regard to the effects of illicit trade in our own dominions, and of competition in foreign places from Opium produced in other countries. Were it possible to prevent the use of the drug altogether, except strictly for the purpose of medicine, we would gladly do it in  
compassion

compassion to mankind; but this being absolutely impracticable, we can only endeavour to regulate and palliate an evil which cannot be eradicated.

No. 5.

(Bengal Separate Department of Opium.)

Our Governor General in Council at Fort William in Bengal.

27 January 1819.

Para. 1. We have received your Political Letter, dated the 4th January 1817, representing the injury which the Opium branch of the Company's Revenue is likely to sustain from the traffic in that article, which is stated to be carried on between the Port of Goa and other ports in India not subject to British jurisdiction, and the Portuguese settlement of Macao, and suggesting an arrangement between the Governments of Great Britain and Portugal, under which the latter Government may consent to prohibit the importation, by its own subjects, into Macao, of all Opium not purchased at the Company's sales in Bengal, and to impose such duties on that drug, whether the produce of Turkey or of any place in India not subject to the British Government, when imported into that settlement by foreigners, as may be tantamount to a prohibition.

2. We are by no means insensible to the injury to which the Company's interests connected with the Opium branch are exposed from the competition of Malwah and Turkey Opium in the Chinese and other Eastern markets; and we approve of the solicitude which you have expressed to provide for the security of this valuable branch of the Indian Revenue. It has, however, appeared to us, so improbable, that the Government of Portugal would accede to an arrangement such as you have suggested, that we deem it quite unnecessary to submit the proposition to His Majesty's Government.

3. The superiority of the Bengal Opium in point of quality over that manufactured in other parts of India, will, we trust, insure to it a preference in the foreign market so long as the superiority is not much more than counterbalanced by the difference in price; and should a reduction in the price of Bengal Opium become necessary, the expediency of proportionately increasing the annual provision will naturally engage your attention. We know of no practicable mode of guarding against the evil which you apprehend, except by supplying the markets at a moderate price with a better article than can be procured from different quarters and through other channels.

We are, your affectionate friends,

(Signed)

JAMES PATTISON.

C. MARJORIBANKS.

S. TOONE.

T. REID.

G. RAIKES.

J. THORNHILL.

J. JACKSON.

JOHN INGLIS.

W. S. CLARKE.

J. BEBB.

GEO. SMITH.

W. WIGRAM.

W. ASTELL.

EDW. PARRY.

G. A. ROBINSON.

London,  
27 January 1819.

No. 6.

Opium.

EXTRACT Letter in the Separate Department, from the Court of Directors to the Governor General in Council in Bengal, dated 8th August 1821.

Para. 110. The subject of the provision of Opium, which has become connected with many new and important considerations, we shall fully notice in replying to Paras. 120 to 136 of your Letter of 17th July 1818.

111. With respect to the prevention of the illicit manufacture and sale of Opium, the principal points here brought to our notice are:

• 112. The delegation of judicial powers to the Revenue Authorities of this Department.

113. The modification of the scale and distribution of rewards on confiscated Opium.

114. The increase of price to the cultivators of poppy; and,

115. The relaxation, in favour of travellers and residents from foreign States of certain provisions of Regulation 13, of 1816.

116. The degree of judicial authority delegated to the Revenue Authorities of this Department, meets with approbation. We refer you to our remarks in a preceding para. on the same subject, in relation to the Salt Department.

LETTER from the Governor General in Council to the Court of Directors, dated 28th February 1817, 29th February 1817, paras. 104 to 138, 150 to 152.

Letter, 4th July 1817, para. 7.

Letter, 24th October 1817, paras. 66 to 69.

Letter, 17th July 1818, paras. 34 to 36, 120 to 122, and 137 to 140.

Letter, 30th July 1819, paras. 111 to 111.

Proceedings connected with the provision of Opium; the prevention of the illicit manufacture and sale of Opium; arrangements for internal sale, and the management of the Behar Agency.

No. 7.

EXTRACT Letter in the Separate Department, from the Court of Directors, to the Governor General in Council in Bengal, dated 30th January 1822.

Para. 40. We have already noticed the progressive decline of the Opium Revenue from 1814-15 to 1817-18 inclusive. This decline was ascribed to the competition of foreign Opium in the Eastern market. The proceedings now before us relate to the measures which you have pursued for the purpose of overcoming this competition, and restoring the prosperity of this branch of our resources.

41. The effects of this competition have been felt, not simply in the depression of the general price of the drug, it has entirely destroyed the advantage resulting from a strict monopoly, which counterbalances the deficiency of unfavourable seasons by a proportionate enhancement of price.

42. We regret to observe that this competition has been greatly strengthened by a deterioration, beyond the example of many years, in the quality of the Opium provided in 1817 and 1818, while the Malwa manufacture of that year was so much improved in quality,

LETTER from the Governor General in Council to the Court of Directors, dated 17th July 1818 (129 to 130, and paras. 142 to 150, of Letter 30th July 1819.) Proceedings connected generally with the provision of Opium for the Government Sales; the extension of the Opium manufacture, and the measures adopted for modifying Regulation I. of 1818, of the Bombay Code.

quality, as to approximate very closely to the properties of the Company's standard Opium.

43. The rivals of the Company in the China Opium market are of three classes; namely, the traders in Malwa Opium, the traders in Turkey Opium, and the traders in illicit Bengal Opium.

44. Of these three sources of rival supply, the Malwa Opium appears, from the excellence of its quality, to have afforded the most powerful instrument of competition; so much so, that in the opinion of the Select Committee of Supra-cargoes at Canton, if the quality of the Company's Opium should not be kept up to the standard established in 1793, and if the quality of the Malwa Drug should continue to rise in proportion to its recent improvement, and the traffic continue equally free from restrictions, there was reason to conclude that the competition would extend to the limits at which the proceeds of Opium in general would merely repay the expense of production and transport.

45. The principal channels by which the Malwa Opium found its way to the Eastern markets, were the Portuguese Ports of Diu and Demau, to which it was conveyed in the first instance through Cambay, Baruch, and other ports of native States. The measures adopted for breaking this chain of traffic, by prevailing on the native Princes to prohibit the exportation of Opium from their ports, and by the establishment of high protecting duties on the transit of the drug, promised only a very limited and problematical success against the efforts of the Portuguese authorities to discover new channels by which the drug might find its way to their ports, the very great temptation to native merchants to co-operate in these views, and the difficulty bordering upon impossibility of effectual prevention on the part of our Government, without constant and vexatious interference with the people and the Governments of native States.

46. The Turkey Opium is conveyed to China and the Malay coast, direct from the Mediterranean, principally by Americans and by British ships from Madeira; and although a very inferior and much adulterated drug, it has proved, since the peace, a formidable rival, from the very high price of the Company's Opium, and the inadequacy of its supply, to the total demand of the market.

47. The competition of Bengal illicit Opium is an evil of serious magnitude, and we observe with regret the great extent to which it is understood to prevail. "This species of smuggling," as is well observed by Mr. Larkins, "lies nearest to our doors: it lessens the public supply and the profit upon it; and it is signally injurious to the fair trader, for in a distant market he has to compete with an article in secret hands, which meets him at half price, and at possibly a total exemption from freight and charges."

48. The principles of a strict monopoly, which supposes the exclusive possession of a market and the consequent assurance of high price, by means of limited supply, are evidently inapplicable to this state of things. You have therefore made it a subject of careful consideration, whether the Eastern market cannot be commanded by the adoption of an entirely different system, namely, by supplying its entire demand at such a price as would render competition unprofitable.

49. It seems to be sufficiently established that the demand for Opium, in the Eastern market,

market, has of late years considerably increased : that the Company's ~~standard~~ Opium obtains a decided preference over every other variety of the drug ; but ~~that its~~ supply is inadequate to the total demand of the market, and that its price places ~~it~~ out of the reach of the poorer classes of consumers ; that the deficiency of its supply leaves an ample opening for the rival supplies, and that its high price enables them to obtain an advantageous sale, even at a much lower rate ; and that the rival supplies ~~have~~ derived a further and very considerable advantage, from an unfortunate deterioration in the quality of the Company's Opium during the two last years (1817 and 1818).

50. In considering the policy of the change of system proposed, namely, of attempting the entire supply of the market, on terms that would annihilate competition by rendering it unprofitable, it became obviously important to, ~~as correctly as possible~~, 1st, the total amount of the probable annual ~~probable extent of~~ the annual provision ; and, 2dly, the lowest ~~It would be worth the while~~ of the rival traders to bring their drug to ~~ket, and consequently the price at~~ which the Company's Opium must be sold, ~~to depress the price of the rival~~ Opium below this level. From these data the ~~ative profit of the present and the~~ proposed systems might be estimated.

51. The results of the inquiries made by ~~nce to these~~ points, and the careful discussion of them in the ~~and Larkins,~~ and in your Resolution of 12th November 1819, ~~at the present supply~~ to the Eastern market may be calculated to ~~cheats. The lowest~~ recorded price of Turkey Opium in the Mediterranean ~~is stated at 800 rupees per chest,~~ or two-and-a-half dollars per pound. You think that this price may be fairly assumed, as somewhat below the price at which any large supply could be profitably furnished. This assumption appears to us to be somewhat too hastily made.

52. There is also evidently some important error in your ulterior calculations. You state that the latest known price of Turkey Opium in the Mediterranean was four dollars per pound, or 1,300 rupees per chest ; and that the latest selling price of the same article at Canton, was 1,035 rupees per chest, " which probably afforded little more than a mere return of the capital employed, and charges incurred, in the adventure."

53. This calculation, however, does not show even a mere return of the capital and charges ; it shows, on the contrary, a considerable loss ; the price in the Mediterranean exceeding the price at Canton by 265 rupees per chest. We cannot suspect an error in figures ; for not only are the same numbers more than once repeated, but the same calculation recurs in another shape, exhibiting similar results.

54. Without, however, dwelling on the errors of a calculation, which we have no means to rectify, we may observe that the only fair conclusion which can be drawn from the premises stated is, that if Turkey Opium, when sold at four dollars per pound in the Mediterranean, gives a fair remittance to China, if sold there at 1,035 rupees per chest ; the same Opium, if sold at two-and-a-half dollars per pound in the Mediterranean, would give a fair remittance, when sold in China, at 642 dollars per chest, with some little addition for the difference of freight, and other charges on bulk.

**(b) Opium**

55. You proceed to observe, " that the comparative value of the Bengal and Turkey Opium in the Eastern market is stated to be as five to three ; supposing the latter therefore to bear the above price of Rupees 1,035, the Bengal Opium might be expected to sell at Rupees 1,723 per chest, and this price would give a fair profit, supposing the average price of Opium at the Calcutta sales to be reduced to Rupees 1,400 per chest." But if, as we have seen strong reason to apprehend, the Turkey Opium might be brought to the Eastern market at 642 rupees per chest, then, according to the above proportions, the Bengal Opium, in order to drive the Turkey Opium out of the market by comparative lowness of price, must be sold at 1,070 rupees per chest in the Eastern market, and consequently at 669 rupees per chest at the Calcutta sales, if the charges be reduced in proportion to the price, or at a still lower rate if the charges be not so reduced.

56. There are other facts stated in the documents before us which you have entirely overlooked, and which we are sorry to observe bear still more unfavourably on your views of this subject. The importation of Turkey Opium into China, is stated to be as the earliest period of European commerce with that country, though it at first took place in very small quantities. Prior to the agency system the Turkey Opium was on a par with, or not much lower than

57. We find, on  
Opium at Calcutta on the  
from the same period,  
teen years from the same  
system, 527 rupees per chest.\* If it was worth the while of the dealers in Turkey Opium  
that the selling price of the Behar and Benares  
at years, from 1787-8, was 558 ; of eleven years  
years of the contract system, 495 ; of four-  
will include the three first years of the agency

140

		Quantity Sold.	Average Per Chest.	Price.
		Chests.		
* Cons. 1st June 1795.	1787-8	Behar ....	3,111	466 1 6
		Benares....	580	474 9 7
	1788-9	Behar ....	1,907	576 11 19
		Benares....	423	563 3 7
	1789-90	Behar ....	1,963	595 3 19
		Benares....	504	582 6 14
	1790-1	Behar ....	2,267	568 5 2
		Benares....	672	539 7 14
	1791-2	Behar ....	2,474	535 9 7
		Benares....	750	516 11 15
	1792-3	Behar ....	2,152	624 1 0
		Benares....	832	637 8 13
1793-4	Behar ....	2,979	553 10 0	
	Benares....	881	586 15 5	
1794-5	Behar ....	3,502	480 6 0	
	Benares....	1,144	639 2 0	
Cons. 19 June 1797.	1795-6	Behar ....	4,749	235 9 0
		Benares....	1,287	246 9 0
Ditto 23 May 1798.	1796-7	Behar ....	5,331	286 11 0
		Benares....	1,233	293 0 0
		Quantity Provided.		
Colln P. 44.	1797-8	.....	4,476	414 0 0
		.....	4,385	775 0 0
		1799-1800.	4,774	667 0 0
		1800-1	4,151	790 0 0

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**Opium.**

to send it to the China market when the price of the Company's Opium at Calcutta was from 500 to 550 rupees, we can scarcely imagine such an enhancement of the cost of production or of transport, as that it would not be worth their while to send it when the price of the Company's Opium at Calcutta is 1,400 rupees, making the most ample allowance for the improved quality of the Agency Opium. We fear, therefore, that the idea so strongly entertained by you, that a sale price of 1,400 rupees for the Company's Opium in Calcutta, will be so low as, by underselling, to drive the Turkish Opium out of the China market, has been taken up on an imperfect view of the subject, and will be found on experience fallacious.

58. We attach more importance to the effects of superior quality in this competition. It was long since observed by a very competent physician, that medicine of so much importance, the diseases in which it is so dangerous, and the quantity in which it is used, can be procured without any loss of quality. This opinion relates solely to the medicinal use of opium, and is unquestionably correct. We have little doubt that the measure to the general consumption of opium, and the eminence of price which the best always commands, is a luxury, in those especially which, like the use of opium, are simple luxuries, but as articles considered indispensable in the Eastern market, a preference sufficiently decided to ensure a large profit on a supply nearly commensurate with the entire demand of the market. We do not expect that the Turkey Opium can be entirely driven out of the market; but we think its sale may be restricted within very narrow limits by regular excellence in the quality of the Company's Opium.

59. The quality of the Malwa Opium, approaching and sometimes surpassing the quality of that of Behar, has rendered that a much more formidable rival in the Eastern market. To repress it, either by underselling it, or by any marked superiority of quality, appears to be impracticable. The prohibitory Regulations, which were designed to check its exportation, could only be partially successful; they were reluctantly adopted by the Native Governments; they were attended in their operation with the most serious hardships to the monied, agricultural and mercantile classes; producing the ruin of many, and causing general dissatisfaction and distress. At the same time they could only be partially successful from the multitude of interests concerned in discovering new channels of illicit exportation, and the extreme difficulty of prevention on the part of our Government; and their success at all events could only have been secured by "an injurious interference with the general commerce of the country," and by "measures which Government could not pursue without a just impeachment of its equity."

60. The measure therefore which was originally proposed by the Board of Trade, and which met with the entire approbation both of your Government and of the Government of Bombay, of taking up the Malwa produce on account of the Company, appears to



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be on many accounts a highly advisable arrangement. Those classes of the native community which have suffered most severely by the prohibitory Regulations, will derive from their dealings with the Company advantages equivalent to those resulting from their original dealings, the suppression or interruption of which, by the prohibitory Regulations, was severely felt by them; and the same article which would otherwise in spite of the regulations, and after occasioning much individual suffering, and much odium to the Company, thus be sent thither in a manner most beneficial to all parties concerned. What would have been otherwise a source of much vexatious and injurious interference with the people and governments of native States, without any commensurate advantage to our Government, will thus become a source of mutual benefit.

61. The average annual supply of Behar and Benares Opium to the Calcutta sales has been about 4,000 chests. The expected supply of Malwa Opium to the sales intended to be held at Bombay is also about 4,000 chests, making the total supply of Opium to the Company's sales (at Calcutta and Bombay) about 8,000 chests.

62. The points of detail which are of primary importance in the local arrangements for the provision of the drug, are to obtain the drug of the best possible quality at the smallest possible charge, and to secure with the fair remuneration of the cultivator; and to reconcile the security of the provision with the prevention of the extension of the cultivation.

63. Of the quality of the Malwa Opium we have already spoken; it is nearly equal to the standard quality of the Opium of Behar. Every practicable method should be taken to bring it to the perfection of this standard, and above all, to prevent its degenerating. The cost of production appears to be somewhat higher than in Behar and Benares. You seem to have some hope that it may be hereafter reduced; of course while the disparity continues, the Malwa drug is the least advantageous provision for the Company. It is on this account sufficiently desirable not to extend the culture, and not for this reason only, but also because the present conjoint production of Malwa, Behar and Benares, is full as much as is desirable under present circumstances. It is also most desirable, that the culture should not be extended in Malwa for the supply of illicit traffic.

64. You think, that although these objects would perhaps be best obtained by the establishment of one or more agencies under the management of British officers, as far as circumstances will allow, on the principles followed under your Presidency; yet various decided objections appear in your judgment to oppose the adoption of such a measure. With this impression, you were of opinion that no better arrangement could be followed than that suggested by Mr. Wellesley, the resident at Indore.

65. The plan alluded to is as follows: "To fix upon certain convenient frontier stations for the receipt of supplies of Opium. To furnish the political authority or authorities in this sphere with copies of the terms on which the Company would receive Opium of particular qualities at the appointed stations, for distribution to the several governments and authorities in Malwa; to authorize the Company's Political Officers in Malwa, or the agents at the Opium stations on the frontier, to invite and receive tenders from

from Government or individuals for supplies of Opium, to be submitted to the approbation of the Government of Bombay, or to be entertained or rejected at the discretion of those officers, these officers being previously instructed in the wishes of the Bombay Government for the occasion; to prohibit the importation into the Company's territories, of any other Opium than what is brought to appointed stations on the Company's account, subjecting all other Opium to confiscation."

66. We strongly doubt if this plan will accomplish the ends in view. The Company's officers can in no way regulate the quality of the drug, or the extent of the cultivation. The only security for the quality, is in the rejection of the supply if the quality be bad; the only security against the extension of the cultivation, is in the prohibitory Regulations. The prohibitory Regulations have been severe, but not successful; if the whole of the present produce of Malwa be taken for the purpose of the prohibition, the prohibitory Regulations will so far cease to be felt, or at least the effect will be complained of; but if the produce be increased, either the Company will take the whole of the produce indefinitely, which may very soon burthen us with a superabundant provision, or the same system will take place with respect to the produce which has already taken place with respect to the whole. As long as the trade in high profit to the British Government, so long will it be worth the concern in the old Malwa trade to secure a share in that trade, and still are concerned in discovering a new source of supply, and still are concerned in discovering a new source of supply. Demauun, will still be in active operation; and the prohibition being considered as such measures as Government cannot justly undertake) the consequence will be an increased produce in Malwa, and a transportation of much of that produce to Diu and Demauun. If with all our matured and acquired means of prevention in our own possessions, illicit Bengal Opium finds its way in no inconsiderable quantity to the China market, it is scarcely to be supposed, that under all the circumstances connected with the Malwa produce, which we have already noticed, we shall not still have to encounter a very formidable opposition from that produce, unless means can be devised to prevent the extension of the cultivation.

67. You propose to discourage the cultivation by limiting your own demand. You think the Company will derive less profit on the produce of Malwa, than on that of Behar and Benares; but you think it necessary to take the Malwa produce, because of the probability that if Government refuses to purchase it, it will ultimately find its way to the Eastern market through clandestine channels; but you do not seem to be aware that this probability will still apply to all the surplus produce beyond the Company's demand, that this surplus produce will, in the natural course of things, if the extension of the cultivation be not prevented, be extended according to the demand from other quarters; and that this demand from other quarters will infallibly take place, so long as the profit on the trade shall counterbalance the risk of clandestine transportation. At what point (that is to say, at what price of the drug in the Eastern market) the profit of the clandestine trade will cease to counterbalance the risk, it is extremely difficult to determine; but we see every reason to fear, that this point is not to be found within limits that would leave to the Company any considerable revenue from Opium.

68. You

Opium.

68. You do not intend to interfere with the cultivation for internal supply, and you state the internal demand to be considerable. Here then is an abundant supply at once in the internal market; a supply as much at the service of the clandestine dealers, as of the domestic consumers, and capable to all appearance, of indefinite extension.

69. We are fully aware of all the objections and difficulties that oppose themselves to the establishment in Malwa of a system resembling that of the Bengal Agencies, but we fear that by no other means can the extent of the cultivation be controlled; and if not only the same, but any thing like the same degree of competition in the Eastern market should be experienced when we furnish it with 8,000 as when we furnished it with 4,000 chests, we see much to apprehend from the consequences of a redundant supply. You have calculated on an inevitable temporary depreciation till the competition of foreign Opium is repressed; but the tendency of our preceding observations leads strongly to the opinion that such depreciation will be, not temporary, but permanent; and that either the competition will not be repressed at all, or that it will return with the return of our profit.

70. The object of the proposed modification of the Bombay Regulation 1, of 1818, was such a relaxation of the import duties on Opium prescribed by that Regulation, as would reconcile the possibility of sufficient import by land for the consumption of Guzerat, with the prohibition of importation by sea. To secure on the one hand to the people of Guzerat the use of Opium which they consider indispensable to their health, and of which the high duty (15 rupees per seer) imposed by Regulation 1, of 1818 was a virtual prohibition; and to prevent, on the other, the allowed supply for internal consumption from being diverted into the channels of clandestine exportation, considering the ample means afforded to the latter by the whole coast of that extensive peninsula which lies between the Gulfs of Cutch and Cambay, and at the southern extremity of which lies the island of Diu itself, one of the principal emporiums of the rival trade, appears to us an attempt replete with difficulties. Your suggestion to the Bombay Government, to avoid for the present any formal repeal of the regulation, and to grant a conditional relaxation of its rules in the form of a temporary notification, rather than in that of a legislative enactment, meets our entire approbation, as the best course which could, under all the circumstances, be pursued. By adopting this method you keep it within your own power to reimpose the duty, without reference to England, whereas if the regulations were repealed, no new duty could be imposed without our special authority.

71. In stating to you the views which have forced themselves upon us on a careful consideration of this question, we would by no means be understood to disapprove the plan you have adopted, which was demanded as a measure of justice, as the only compensation that could be offered for the injury sustained by the people from the operation of the prohibitory Regulations. If those Regulations had been abolished, the open competition of the Malwa drug would have destroyed our Opium revenue. If they had been continued without the alleviation of the present measure, they would have continued to produce the greatest hardships to the people, and could only have been rendered effectual at an enormous expense in establishments, and by means which Government could not pursue without a just impeachment of its equity.

72. We

72. We are fully aware that you had only a choice among many opposite difficulties, and that you had it not in your power to fix on a course that would not have been liable to exceptions, but we have deemed it necessary to call your attention to some important considerations which you appear to have overlooked, and which forbid us to entertain any very sanguine hopes that the result of the course you have pursued will realise your expectations of maintaining the revenue at the standard of the most favourable year (1814-15), at the same time the means which the Company possesses of commanding a large supply on moderate terms and of an excellent quality, will always afford it a considerable advantage in the ordinary course of mercantile competition. We have no doubt that these advantages are capable of very great extension, if the drug be supplied of such uniform good quality as will give the purchasers in the Eastern market implicit confidence in the Company's stamp. This confidence the ~~agent~~ has greatly weakened. If this confidence can be restored and preserved, ~~it will~~ derive considerable benefit from that moderate profit on an ~~our~~ expectations; but we are fully persuaded that ~~it~~ be preserved or lost, this branch of our revenue ~~is~~ of vital importance, and that to which your ~~is~~ the preservation of uniform excellence of quality.

73. We approve the distinction in the form of ~~it~~ made between the Opium of Malwa and that of ~~it~~

~~it~~ derive considerable benefit from that moderate profit on an ~~our~~ expectations; but we are fully persuaded that ~~it~~ be preserved or lost, this branch of our revenue ~~is~~ of vital importance, and that to which your ~~is~~ the preservation of uniform excellence of quality.

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No 8.

EXTRACT Letter in the Separate Department, from the Court of Directors, to the Governor General in Council in Bengal, dated 11th July 1827.

Para. 36. We acknowledge the justice of your remark, that the subject of Malwa Opium is beset with difficulties, and we are happy to perceive by the voluminous correspondence which we have perused, that it has been considered by you with the most anxious attention, though we have to lament that the information before us remains too imperfect to enable us to form any decided opinion on the questions which still perplex you.

Letter from the Governor General in Council to the Court of Directors, dated 23d March 1821 (127 to 134; also Letter 30th July 1823, paras 42, 43, and 40 to 44.) Provision of Malwa Opium, and annexation of the Malwa Agency to Calcutta. An increase of price thought necessary to the cultivators of Opium in the Bengal Agencies. The Collectors of Tirhoot, Sarun and Shahabad, to act as deputies to the Opium Agent in Behar. Dr. Hare appointed to act as Examiner of Opium, and the expediency of a third Opium Agency in Rohilcund, under deliberation.

37. Your object in taking into your own hands the market of Malwa Opium, was to prevent its competition with that from your own Agencies in Bengal, and thence to secure the benefit of a monopoly in the Eastern market. That the experiment as yet, has been far from successful, sufficiently appears from the documents before us. You were but little satisfied with the conduct of the agent employed by the Bombay Government in Malwa. The extent of his pecuniary drafts is one circumstance which, of course, attracts attention. They amounted, for the supply of one year (1823), to the enormous sum of 86,25,000 rupees, and as yet we have no documents to show how it is accounted for. On this subject, therefore, we are under the necessity of postponing our opinion.

38. The

Opium.

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38. The means of preventing the Opium, raised without restriction in Malwa, from reaching the hands of the private merchant and the China market through him, seem to be of two kinds, either obstructions to the transit, or such regulations of prices as may exclude competition.

39. The first of these expedients is so difficult that its success must be regarded as exceedingly doubtful. The commodity is so valuable in proportion to its bulk, that it is easily carried and concealed; and it is, or may be raised over a great extent of country, or rather, of many countries, of some of which we have not the government.

40. In attempting to exclude competition by the second expedient, that of regulating the price, it is easy to foresee this inconvenience; that if you give such a price as will prevent all rivalry from the private trader, you encourage the manufacturer to augment the quantity to an extent which will speedily glut the market; and this seems to have been one of the inconveniences actually experienced in the case of Mr. Taylor's agency.

41. Your Secretary, Mr. Holt Mackenzie, whose opinion has always great weight with us, seems to regard the attainment of your object, either by obstructing the transit of the commodity to the coast, or by regulating the price, as hopeless; and he came to the conclusion,\* that unless some arrangement for shackling the trade in Malwa Opium be adopted, there is little chance of being able to prevent such a fall in price, from superabundant supply, as to render the possession of the monopoly in Bahar and Benares of little value." This expedient is to monopolize the cultivation in Malwa, in the same manner as in Behar and Benares; in other words, to prevent the cultivation of Opium by any other parties than those with whom Government enters into contract. As no observation is made upon this plan, either by you, or by the Board of Customs, Salt and Opium, we conclude that it is regarded by you, as indeed it appears to us, impracticable. To prevent clandestine cultivation through such an extent of country as Central India, in which the machinery of our Government is very imperfectly, and in some places not at all, introduced, and to obtain a faithful execution of any compact for that purpose, which the native Chieftains may enter into with the British Government, appears to us still more difficult than the other expedients which have so imperfectly answered your expectations. The unfavourable impression on the minds of the people, which we are informed by Sir John Malcolm† has been the effect of our endeavour, even to monopolize the produce, must be still greater if the monopoly and limitation of the manufacture is attempted.

42. Under these circumstances, and still more when we consider how extensively from other countries than India, from Turkey, and from Persia, Opium may eventually be procured by the private trader, we cannot conceal from ourselves the probability that it will not be in your power to maintain a control over the supply of the Eastern market.

We

\* See his note under date July 10, 1823.

† "That our extension of the monopoly of Opium to Central India, will be attended with considerable trouble, and that it will, from the immunities we may require, and the connection with managers and others to which it may lead, give rise to much annoyance and general jealousy and bad feeling, is not to be doubted. It will, and indeed has already, made an impression not favourable to our interests."—Letter of Sir John Malcolm to Mr. Secretary Warden, dated April 26, 1821.

We do not, however, adopt to its full extent the conclusion which has been drawn by Mr. Mackenzie, "that the possession of the monopoly in Behar will then be of little value." It appears by the statements furnished to us, that Malwa Opium cannot be cultivated and brought to the coast for less than from 600 to 700 rupees per chest. It appears also that in Behar and Benares your Opium is produced at 100 rupees per chest, or perhaps less. If you were obliged then to sell as cheap as the lowest price at which Malwa Opium can be sold, you would still have a profit of 300 rupees per chest. But farther than this, it seems well ascertained that the Opium of Behar and Benares is a preferable article, and will always fetch a higher price than any other Opium. It seems to be the practical inference from all this, that your main attention should be directed to the means of attaining the greatest possible revenue from the Opium of Behar and Benares.

\* 43. Under the prospect which seems forced upon us by the state of affairs, the measure which we perceived has occupied a great share of your attention, of removing the Malwa agency from the Bombay Presidency to your own, is a matter of inferior importance. Though strong considerations were urged by Mr. Warden for retaining the agency and the Malwa produce on the western shore, we think that those by which you were determined preponderated. You could not have made a more judicious selection than that of Mr. Samuel Swinton for agent in Behar. The objection which we should otherwise have felt to the appointment of a military officer (Captain Dangerfield) to the office of assistant, is in this instance superseded by the peculiar aptitude of the individual whom you describe as having, under Sir John Malcolm, enjoyed great opportunity of acquiring both local knowledge and experience in regard to the culture and disposal of Malwa Opium. Though the allowances of these officers are high, they are disproportionate to the importance of the trust.\*

\* 44. We have had an opportunity, by the arrival of your consultations in this Department to March 1824, of observing the proceedings of Mr. Swinton to a late date, with which we are happy to perceive that you have reason to be fully satisfied; and from that gentleman we trust you will derive information sufficient to come to a satisfactory conclusion as to what is your best policy in regard to Malwa Opium. Respecting your directions for the provision for 1824, which appear to us to be judicious, we shall speak more fully in our next letter in this department.

\* 45. We have considered with much attention the correspondence relative to the provision of Opium in Behar and Benares, and have been very forcibly struck with the imperfect information which you possess relative to the cultivation of the drug, even in those provinces where you certainly had the means of obtaining a full acquaintance with every thing connected with it. We cannot forbear attaching blame to preceding Boards, to which this important branch of the interests of the State was specially entrusted, for the want of information which is now apparent in your proceedings, and trust you will take care that a speedy remedy for this defect shall be provided by the present Board.

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46. Under much diversity of opinion and strong considerations adduced on both sides, you have come to the resolution of allowing an additional price to the growers of Opium in the Bengal agencies. We cannot pronounce that you have done wrong in this. But we are not satisfied in the present imperfect state of information, that you have done right. We are indeed inclined to think that until you were better acquainted with the grounds on which you were to proceed, the preferable course would have been to abstain from innovation. It may still be found that this increase of price was not necessary, but it will not be easy in such an event to reduce it.

47. The appointment of the collectors of Tirhoot, Sarun and Shahabad, to act as deputies to the Opium Agent in Behar, and of Dr. Hare to act as examiner of Opium, and to secure, by a more accurate analysis, the due perfection of the drug, are arrangements which promise the advantages you expect from them.

48. The project of establishing a third agency in Rohilcund is under your consideration, and we expect from you more ample information on the subject; till which time we shall defer the forming of our opinion. One thing we may remark, that all plans for enlarging the supply of Opium in the Bengal agencies, must depend so much upon your final determination with regard to the Western produce, that till such determination is made, you hardly can, without danger of great mistake, adopt any specific proceedings. In the event of your decision being to continue your efforts to preserve the monopoly of the Western produce, a point to which we do not see that you have adverted, will present itself for consideration; *viz.* whether by arrangements with the Governments to which the several Ports in the Western Coast belong, a considerable export duty might not be imposed. This, if practicable, would both tend to keep up the price in the Eastern market, and, to the extent of the proceeds, would be an immediate gain.

No. 9.

EXTRACT Letter in the Separate Department, from the Court of Directors, to the Governor-General in Council in Bengal, dated 21st January 1829.

Para. 2. We now reply to paras. 408 to 412, and para. 419 of your Letter, dated 31st May 1827; also to your Letter, dated 18th October 1827, and in conjunction with these, to a former Letter of yours, dated the 18th of May 1826.

3. In these paras. four different subjects are presented to our notice, which we shall consider in the following order: 1st. The employment of certain collectors as deputy Opium agents; 2dly, The appointment of Mr. Fleming to act in the capacity of referee and supervisor in Behar in Opium affairs; 3dly, That of Captain Jeremie to perform certain experiments for the improvement of the drug, and to prepare it for medical purposes; 4thly, The proposal for erecting a separate office for the business of Opium Examiner at the Presidency.

4. First: The subject which comes first in this order is the plan you have adopted, of employing the collectors as deputies to the Opium agents of Behar and Benares, in those  
of



of the more distant Aurungs, where a more efficient control seemed wanting over the native officers, and more complete security to the cultivators of receipt, the full advantages to which they are entitled. We have already sanctioned this measure, as far as regarded the appointment of the collectors of Tirhoot, Saran and Shahabad, by our Dispatch, dated 11th July 1827; and you now inform us that, in addition to those officers, you have invested with the powers of deputy Opium agents in their respective districts the collectors of Allahabad, Benares, Juanpore, Goruckpore, Ghazaspore and Ramgur. We perceive by your correspondence with the Board of Customs, Salt and Opium, and the Central Board of Revenue, that the advantages and disadvantages of the measure, and the means of obviating, as far as possible, all probable inconveniences, were carefully considered, and we feel no hesitation in giving it our full approbation. We think also that you judged well in respect to the remuneration of collectors for the duties of Opium agency, by adhering to the general rule, which makes the reward contingent upon the success.

5. Second: Your experience seemed to you an inconvenience under this arrangement; namely,

Opium agent and the deputy agents, the deputy agents; and it appeared to you a of adjusting those disputes. The expedient

minds; and you deemed yourselves fortunate purpose, in Mr. Fleming, Second Judge of the

undertake the duties without detriment to those of situation in the judicial department. In order to derive advantage as far as possible from the services of Mr. Fleming, who, in his judicial capacity, would be called into many parts of the Opium district, and might be of great use by his supervision and suggestions, you thought proper, on the recommendation of the Board of Customs, Salt, and Opium, to constitute him a Supernumerary Member of that Board in the Opium department; and for the performance of all these duties, you assign him an extra allowance at the rate of 500 rupees per mensem, to be drawn from January 1826, on the ground that his services, during the whole of that period, had been given to the department.

afforded reason to anticipate one disagreement arising between the

of the Opium delivered by

provide the means

presented to your

highly qualified for the

at Patna, who could

6. One observation immediately occurs on the consideration of this arrangement; that if the performance of these duties, the settlement of disputes between the agent and deputy agents, and between the cultivators and other parties, together with the improvement of the cultivation and manufacture, be of importance in the Behar agency, it must be of corresponding importance in the Benares agency. In particular, the settlement of disputes must be an exigency equally strong in the one case as in the other, yet the provision is made solely for Behar. Under the painful experience which we have had of the shifting and unsettled character of your plans of administration in the Opium department, and the present absence of any explanation, why that which you deem of so much importance for Behar has not been thought of for Benares, we cannot exempt ourselves from the fear that this measure has been adopted under no general and comprehensive consideration of the subject, embracing collectively the objects which you desire to obtain, and distinguishing skilfully the series of operations through which they are most likely to be secured; the suspicion rather is excited, that the suggestion arose from no consideration more



enlarged, than the existence of an officer on the spot whom the employment would peculiarly suit, and that of an Opium agent, who needed his assistance. We are not disposed, on the ground of this suspicion, to condemn the appointment; but we dislike a partial expedient for a general exigency, and we disapprove the absence of explanation, when a remedy provided against anticipated evil in one case is not afforded in others, where it seems equally wanting. Another thing which seems exceptionable to us in this arrangement is, that being made for a permanent purpose, it is not calculated for permanency; because the circumstance of a Judge of Circuit on the spot, possessing the qualifications of an Opium referee and supervisor, is not likely to occur again. It is true, that your experience of Behar, with a referee and supervisor, and Benares without any such officer, will afford you some means of comparison. But Government should not in this or in any other department, be for ever a matter of experiment. You should by this time be able to proceed upon former knowledge, and anticipate effects. Should it be found that the Benares agency can be conducted prosperously without a referee (and if the agent is an officer fully qualified for his office, we see no reason why it should not), the inutility of such a functionary in Behar being thereby proved, the abolition of the office will be only an addition to those fluctuations in your affairs, of which there seems to be no end. As full time for this experiment will be afforded before the present despatch can be received, we direct that no time be lost in affording us an accurate and faithful report on the subject.

7. Third: The project of extending the cultivation of Opium to Rohilcund, and establishing there another agency, suggested by Mr. Forde, collector of Moradabad, and Captain Jeremie, was by you, upon reasons which appear to us satisfactory, declined. But in consequence of the report of the late Doctor Abel, that the Opium grown by Captain Jeremie, in Rohilcund, possessed "superior excellence as a narcotic over that of Behar, Benares or Patna, while in its other qualities it would bear a comparison with the finest kind of that grown in Turkey," the Board of Customs, Salt and Opium, being of opinion that opium, of the character of that produced by Captain Jeremie, might be prepared in any of the present agencies, recommended that an experiment to that effect should be made; and in the making of it, that the following points should be in a particular manner attended to.

" 1st. Generally, whether our Behar, Benares, and Malwa Opium are capable, by means of improved cultivation or different preparation, of being assimilated, in all respects, to that of Turkey.

" 2d. Whether, if converted into such, in what way the value of each would be affected in Chinese estimation.

" 3d. Whether the present proportion of narcotic substance in the Behar Opium could be augmented, and the drug be still preserved, free from the noxious properties which the Chinese consider the Turkey Opium to possess.

" 4th. What it is in the manufacturing process in our agencies that is prejudicial to the goodness of the drug, compared with the Turkey opium, as a medicine in Europe.

" 5th. How far, if the character of Turkey Opium can be imparted to the produce of India, and the article be sent home to compete with the other, there would be any fear

fear of its subsequently finding its way to China, and so interfere with the exports made directly from hence; and,

" 6th. If possible, to discover the nature of those desirable qualities in the Behar Opium which have already obtained for it such a decided preference amongst the Chinese consumers.

Opium.

8. The Board proceeded afterwards to recommend Captain Jeremie for the particular service, in the following words: " We attach great importance to the careful investigation of these points, and we really do not see how they could be more successfully examined than by Captain Jeremie, who has manifestly acquired an extensive knowledge of the subject, and by the light which he would throw upon it in its various branches, if his services were wholly at the disposal of the department would, we are persuaded, amply repay the Government for any remuneration which they might give him. What we would suggest is, that Captain Jeremie be permitted to, being, while there, under the orders of the agent, and that a man of land be assigned to him wherever the soil is most favourable for his experiments. The objects we have in view are evidently of a nature that can only be thoroughly ascertained by a minute and narrow scrutiny into the varieties of soil, the different modes of cultivation, and all the operations of manufacture; so that, at first, considered in the light of an assistant to the agent, and be subject to his supervision, it would be best that his attention should be confined to different specimens of Opium that he might prepare would be kept wholly the general investment, so that there could be no fear of any change of feeling to it; nor would any the slightest alteration be suffered in respect to the present provision, until after it had been actually proved to be beneficial, and had, of course, been submitted for the sanction of Government, so that we do not apprehend any possible harm. On the contrary, there is every ground in the evidence Captain Jeremie has afforded of his competence to the undertaking, of deriving gradually the most valuable information from his employment in the service.

" This appears to us the only way in which the experiments could be conducted with a hope of success, the opium in small parcels being sent to Calcutta after it was made, and by us being subsequently forwarded to different quarters, and especially to the Honourable the Court of Directors, if it is found practicable to prepare a quantity on the Turkey principle.

" An improved mode of packing the Opium would form also another subject of inquiry, on which Captain Jeremie has already, in his correspondence with Mr. Forde, offered, as it appears to us, some good suggestions."

9. Approving these suggestions, you authorized Captain Jeremie to be employed under the agent at Behar, at a salary of rupees 500 per mensem, as a temporary arrangement, and for the purpose of experiment. Afterwards, on a strong recommendation from the Medical Board that Captain Jeremie should be employed to manufacture a pure Opium for the use of the medical department, you thought proper that this should be included among the duties he was to perform.

10. Averse as we are to the creation of a new office, and to any addition to the expense of your Government, we think that the advantages here in view were so great, and the promise

promise them so fair, as to justify a temporary arrangement for the chance of their attainment. It is our particular desire, however, that the temporary and experimental character of the measure be not lost sight of; and to this end, that an accurate report be forwarded to us as soon as possible, informing us what the result of the experiment has been, and whether any arrangement consequent upon its success or failure is by you reckoned expedient.

11. Fourth. When you had made such extensive arrangements and sanctioned so great an expense for superintending the produce and preparation of Opium, and improving the quality of the drug, we expected to find a distinct declaration on your part, that the expensive project which you had formerly in view, respecting an office of Opium Examiner at Calcutta, and which you reported to us in your Letter dated the 18th May 1826, had been relinquished. Of this project we did not think favourably from the beginning, and on that account suspended our approbation. The reasons which induced us to incline to the opinion of those members of your Government who were averse to the proposition (for there was a difference of opinion in the Council), it is not necessary for us now to state at length, because the arrangements which you have since adopted supersede the presumption of utility on which the former project was grounded. The functions of Opium Examiner at the Presidency have one main object in view, that of satisfying the purchasers in a general way, as to the quality of the article offered for sale. To this you proposed, through the establishment of an office of Opium Examiner, to add another service, that of superintending the produce and improving the quality of the drug. These, however, are the very objects which it is proposed to accomplish through the appointments of Mr. Fleming and Captain Jeremie; and if these appointments answer your expectation, we see not any purpose of this nature which remains to be effected through the instrumentality of a separate functionary at the Presidency. If this be so, the duty of an Examiner at the Presidency is restricted to that narrow and very easy one, of passing such a judgment on the quality of the Opium, as is requisite for the satisfaction of the dealers; and which, in the opinion of all parties, can be performed with perfect convenience by the Apothecary General. From your silence on this subject in your latest letters, we infer that we shall hear no more from you of the establishment of such an officer as that of Opium Examiner at the Presidency, which, in the present state of our knowledge, we should not consider entitled to approbation.

No. 10.

EXTRACT Letter in the Separate Department, from the Court of Directors, to the Governor-General in Council in Bengal, dated 16th September 1829.

Para 2. We now reply to so much as relates to the subject of Malwa Opium, in your subsequent communications, viz.—

Letter, 31st May 1827, Paras. 318 to 357.  
— 26th June 1828, - - 174 to 207.  
— 30th Oct. — - - 346 to 368.

3. On

Opium.

3. On the danger to which you conceived the revenue derived from your **Bombay** Opium was exposed, unless a check could be applied to the exportation of Malwa Opium to the Eastern market, on the difficulties which seemed to oppose the establishment of such a check, and on the plan which you had adopted for making the experiment, by transferring the agency from the Bombay to your own Government, you have already reported your sentiments, and received our replies. In the documents now before us we have an account of the proceedings of Mr. Samuel Swinton, from the time of his being appointed your agent till nearly the time of his resigning the office; and the whole of your correspondence with him and with the Superintending Board, on the subject of his operations. We are now, therefore, able to take a view of the objects which he effected, and of the prospect in regard to the future which the result of his proceedings may be deemed to afford.

4. We think you acted judiciously in your mode of disposing of the Malwa agency at Calcutta and Bombay; a point which could not be

agreed by trial, in what proportions it would be expedient to dispose of the Malwa agency at Calcutta without experience.

5. The attention of the agent was of course in relation to knowledge respecting the extent of the cultivation might in ordinary which it was capable of being conveyed to the the questions remaining were, by what means the those moderate limits within which it was of that it should be confined, and what were the preventing the transportation of the article to the coast, and its consequent exportation to the Eastern market.

at instance directed to the acquisition of Opium in Malwa, the extent be ascertained, and the roads by which it could be kept within the objects you had in view be employed for preventing the transportation of the article to the coast, and its consequent exportation to the Eastern market.

6. The result of the active and judicious inquiries of Mr. Swinton, was satisfactory in regard to both points; the quantity of Opium capable of being cultivated in Malwa, and the routes by which it could be made to reach the coast.

7. It had been apprehended, that in the extensive regions of central India, the means of extending the cultivation of Opium were unlimited. It appears that this is very far from being the case. It requires much irrigation and manure; and the cultivation of it in fact, is very expensive.

8. It seems to be ascertained also, that the number of routes by which Opium in any quantity worth regarding, can be conveyed to the coast, is not considerable; and that the means of closing them, at least so far as to prevent any but small quantities from being conveyed by them to the coast, are not unattainable. Great praise is due to Mr. Swinton, for the active industry with which he prosecuted the inquiries which led to these results, and for the judgment and good sense which he displayed in the mode in which he elicited his information.

9. The two great objects for the attention of Mr. Swinton, after the knowledge of the facts on which his proceedings were to be founded, were so to conduct his operations in effecting the purchase of the commodity as to bring down the price, which had been enormously enhanced by the injudicious proceedings of the Bombay agent; and in the next place, to secure the co-operation of the native Princes in whose territories the drug is cultivated, or through whose territories it must pass in its way to the coast.

\*

10. In

10. In the first of these objects, the efforts of Mr. Swinton were attended with a success much beyond what could have been anticipated. In the first year of his agency (1824) you were obliged to authorize him to go to as high a price as 55 rupees per punsurce of 10 lbs.; you were enabled to reduce the limit to 40 rupees in the next year; and at last Mr. Swinton was enabled to purchase at the comparatively low price of thirty rupees.

11. This reduction of price, under all the difficulties with which Mr. Swinton had to contend, tends strongly to confirm his conclusions respecting the practicability of excluding competitors from the market of Malwa Opium, and securing to the requisite degree, the command of it in the hands of the British Government.

12. Towards the attainment of the second object, the hearty concurrence of all the native Princes, whose co-operation was necessary to restrain the cultivation of the drug, or prevent its passage to the coast, considerable progress seems to have been made; in which we see with approbation, how much Mr. Swinton was aided by the co-operation of Mr. Wellesley. After negotiations, which necessarily occupied a considerable time, arrangements were effected with the Raj Rana of Oodeypoor, the Maha Rao Rajah of Boondee, with the manager of Meer Khan's Pergunnah, in Meywar, with the Raj Rana of Kotah, with the Government of Bikaner, and with some other states in Malwa.

13. It is not our intention to enter into the detail of the agreements which were made with these rulers. We are, with satisfaction, that all the particulars were carefully considered, that great diligence and discretion were employed in managing the negotiations, and that the object of reconciling the interests of the chiefs and states in question, with those of the British Government, was steadily pursued, and, we believe, to a great degree attained. We perceive it was your opinion, that in some particulars the arrangements made would still admit of beneficial alterations; this was to be anticipated in a case altogether new. We trust you will keep your attention fixed upon the subject, and make such alterations as farther observation may suggest.

14. With respect to the rulers of the states with which the engagements were found, it was your object to give them what might appear to be an equivalent for the revenue they might lose by aiding your monopoly. These rulers will only be induced to draw cordially with you in the measures necessary to secure your monopoly, by being led to think that they rather gain than lose by doing so; and this persuasion you must endeavour to establish in their minds, while you must suggest to them such modes of confining the cultivation of the poppy to the best soils in their respective dominions, and of limiting the total extent of its cultivation as may be least oppressive, and least forcibly strike the ryot as an arbitrary and injurious interference with his rights and interests.

15. The pecuniary "result of the Opium concern in Malwa," you say, "belongs more properly to the financial department, and will there be explained." You present us, however, with a statement of your disbursements and receipts in this concern, to the end of the official year 1825-26, which exhibits a net profit of rupees 6,55,754, exclusive of the Opium remaining in store, and of the quantity transferred to the Abkarry department. You have been fully advised, in our Territorial Finance Letter, dated the 3d June last, that the accounts on which the calculations of the profit and loss resulting from the monopoly of Malwa Opium had been made, were very defective; and that there

was reason to suppose that the real profits at the close of 1825-26, exceeded 100 lacs of rupees.

16. From the success which has attended these proceedings, we entertain a more favourable opinion of your power so to restrain the exportation of Malwa Opium, as to prevent it from materially interfering with your Opium revenue, than that which we were obliged to draw from some of your previous communications. It is an object of so much importance, as to deserve your utmost endeavours for its attainment. We observe, that your hopes with regard to the future, were still mixed with some apprehensions; and there could be no doubt that the precautions you had been able to take, might still be defeated by circumstances of which you had not at that time been able to take account. Much would no doubt depend upon the parties into whose hands the business devolved after the departure of Mr. Swinton, and upon the ability and zeal with which the measures he had so well commenced, were followed up. We shall be happy to hear that an arrangement similar to that with the other states, has been made with Scindia's Government, the co-operation of which, in the restricted system, appears of importance to its success.

17. In the present state of our information, we think it unnecessary to make any further observations. The general object of your proceedings, that of securing a large branch of the revenue, is of obvious importance; and the object appears to have been such as, considering the difficulties in which you were placed, and the necessity of feeling your way, good policy directed.

18. We remain anxious for information respecting the subsequent proceedings and their results. We earnestly hope they have been successful. At all events we trust they have been such as to afford decisive evidence of what we have to expect; and that we shall not long have to wait for the communication.

19. We observe from the Report of the supracargoes at Canton, dated 13th September 1827, that the Chinese have manifested an increasing taste for the Opium of Malwa: and that it had in consequence of this and the disrepute of the Bengal Opium, arising from the bad quality of it in the preceding year, produced a much higher price than the Patna and Benares Opium, which in that year were stated to be of good quality. This circumstance, though the supracargoes describe their information as very imperfect, we trust has not been overlooked by you and the Board of Customs, as indicating the course which ought to be pursued in our Bengal agencies. It is at variance with the theory of the late Dr. Abel in attempting to explain the reasons why the Chinese preferred the Patna Opium, both to the Malwa and the Turkey Opium. We hope that the experiments which were approved of in our Letter dated 21st January last, will have enabled you to judge of the competency of the officers entrusted with the preparation of an article so important both to the commercial and financial prosperity of your Presidency, to improve the quality of the Opium. Should you entertain doubt on this point, we must insist on your adopting the course indicated in the concluding paragraph of that Letter, as we cannot for a moment consent to sacrifice objects so important on account of any personal considerations.

Opium.

LETTER from the Governor-General in Council in Bengal, in the Political Department, to the Honourable the Court of Directors for Affairs of the Honourable the United Company of Merchants of England trading to the East-Indies.—(Dated 10th July 1829.)

Honourable Sirs:

HAVING received from the several Political Authorities their answers to the call which was made on them to report the result of their observations on the effect produced by our arrangements, for the restricting the growth and suppressing the exportation of Malwa Opium (as reported to your Honourable Court in paragraph 178 of our Address from this Department, dated 8th May last), we have now the honour to submit copies of all the Documents connected with the Opium question not referred to in that Address, or subsequently received, as well as a copy of the Resolution which, after mature deliberation of the contents of the several communications here referred to, we have passed on this important subject, involving the total abandonment on our part of interference with the growth and transit of Opium throughout Central India.

2. We deem it unnecessary to occupy the time of your Honourable Court with a repetition of the grounds on which we have considered it imperative on us to adopt the measure abovementioned, as they are distinctly stated in the Resolution. A summary of the correspondence on the subject of our Opium arrangements having been prepared in the Secretary's Office, a copy of that paper is also transmitted, a number in the Packet.

3. On a reference to the Resolution now submitted to your Honourable Court, you will observe that we propose to take into consideration in the General Department, whether the provisions of the existing treaties relative to furnishing a supply of Malwa Opium shall be kept up with any, and which, of the Malwa states, supposing, of course, that they are willing to continue to deliver the article to us, on the present terms, or any others that may be negotiated, and generally, what measures should be taken to provide for the Bombay sales, and extend the cultivation of the poppy in Behar or elsewhere within the Honourable Company's Territories.

We have the honour to be, with the greatest respect,

Honourable Sirs,

Your most faithful humble servants,

(Signed)

W. C. BENTINCK.

W. B. BAYLEY.

C. T. METCALFE.

Fort William, 10 July 1829.

ABSTRACT of Correspondence regarding Malwa Opium, commencing from the Year 1818 to the Year 1828; in two Parts.

Opium

Part 1st.

THE first Paper in the series is a Despatch from the Supreme Government requesting a communication of the views of the Bombay Government as to the best method of checking the exportation of Malwa Opium, *viâ* the ports of Diu and Demaup, for the China market. The Bombay Government state, in reply, that, 1st. As the cultivation of the poppy had been prohibited in Guzerat (in 1803) by the influence of the British Government, so by the same influence the cultivation of the drug for exportation might be prohibited in Malwa: 2dly. That should the prohibition of the cultivation of the drug in Malwa be considered objectionable or impracticable, the poppy in Guzerat we should at any time be enabled to drive the Malwa of the Chinese market.

In the Resolution of Government recorded in margin,† a full review is taken of the question of our restrictive measures extended to Malwa. Territorial Department, as per Opium, and of the effects it

After explaining the relative value of the market (which is as 5 to 3), and showing that the effects of that Opium, provided the price of observed that, on account of the demand for Malwa in the Chinese market, it is impossible for us to retain our strict monopoly of Bengal Opium; it remained to be considered whether we could obtain supply from Malwa at such a price as to prevent any great deficit in the revenue from the inferior price which Bengal Opium must fetch in consequence of the modification of our monopoly.

The objects that would be attained by a more extended supply of the Chinese market on moderate terms would be, 1st, the prevention of smuggling; 2dly, the expulsion of foreign Opium from the Chinese market. The total amount of foreign Opium supplied to the China market in the year 1817-18 exceeded 3,000 chests, and the supply to Java and the Eastern Archipelago averaged 1,100 chests, making a total supply of 4,100 chests. If then 4,000 chests, in addition to our Bengal Opium (1,000 chests) could be supplied by us from India, it would appear that our Bengal Opium would suffer no material depreciation. The chief object in view must necessarily be, 1st, to obtain the supply of 1,000 chests from Malwa; and, 2dly, to prevent, by restrictive measures, the production of any quantity of Opium in excess of that supply. The scheme, however, of introducing our restrictive measures into Malwa was stated to be liable to many objections; viz.

- 1st. That it would be an improper interference in the internal affairs of foreign states: 2dly That it would paralyze the trade and commerce of the country in question:

\* Political Consultations, June 5, 1818 No. 95.

† Territorial Department, 1819. Consultations, Nov. 12. No. 14.



## Opium.

question: 3dly. That it would render our Government universally unpopular; and it was left to the Bombay Government to propose measures which would obviate those objections.

In a Letter from the Bombay Government, of the 12th May 1820,\* certain suggestions of Captain Pottinger's are mentioned. That officer points out the necessity of restricting the subjects of Holkar and Scindiah in the Deekan by the same regulations as the subjects of the British Provinces, from the sale and importation of Opium.

The right of the British Government to search all merchandize that might conceal Opium in its transit through the British territory to Scindiah's Deekane villages, is pointed out in the Despatch as per margin.†

In the Letter from Bombay of 14th December 1821,‡ the route by which Malwa Opium is smuggled to Diu and Demaun is marked out. It is conveyed from Malwa to Paulee, thence to Jussulmere, thence to the port of Kurrachee in Sind, whence it is shipped to Demaun. The necessity of prevailing on the Jussulmere Rajah to prevent such traffic in future, was particularly brought to the notice of Government. In consequence of this recommendation, a letter was addressed to the agent in Rajpootana,§ directing him to use his best endeavours to prevail on the Joudpore and Jussulmere Rajahs to prevent the transit of Opium through their dominions.

By a Despatch of the 27th November 1821, from the Political Agent in Khandeish,|| by that of the Political Agent in Kurrachee Kaunta, dated 10th December 1821,¶ and by a Letter from the Resident in Cutch, of 19th March 1822,\*\* the extent of the illicit trade in Malwa Opium, and its transit *via* Khandeish to Jussulmere, and *via* Kurrachee to Demaun, is again brought to the notice of Government; and a Letter from the Secretary to Bombay Government,†† reports the arrival at Demaun of 1,200 maunds of Patna Opium, and suggests the expediency of issuing orders to our allies in Malwa for the suppression of the illicit traffic.

In a Resolution of the 19th September 1822, by the Governor-General in Council,‡‡ the original scheme of purchasing 4,000 chests of Malwa Opium is discussed and decided on as to the best means of preventing the illicit export. It is observed§§ that the agent ought never to buy Opium which is not likely otherwise to come into competition with the public sales, and that he ought never to give such a price as the private merchant could not afford to give.

With regard to the disposal of Malwa Opium thus purchased, the Governor-General in Council considered it advisable to bring the whole or a great part of it to Calcutta.

On the 14th September of the same year, a Despatch from the Bombay Government|| announced that the deputy Opium agent in Malwa has secured 11,000 maunds of Opium, and expected to procure 4,000 more. The deputy Opium agent having suggested the expediency of indemnifying the native Chiefs for the losses they sustained on account of the

\* Political Consultations, July 15, 1820. No. 99. † Ditto, Nov. 14, 1820. No. 105.

‡ Ditto, Dec. 29, 1821. No. 70. § Ditto, No. 71. || Ditto, Feb. 2, 1822. No. 39.

¶ Ditto, Feb. 15, 1822. No. 24. \*\* Ditto, June 14, 1822. No. 53. †† Ditto, Oct. 4, 1822. No. 87.

‡‡ Ditto, No. 87. §§ Paragraph 6. || Political Consultations, Oct. 25, 1822. No. 17.

the export of Opium being prevented, the Honourable the Governor dis-  
the originating of any offer of indemnification on our part, as he it would be  
a loss of money without any equivalent benefit.

Opium.

On the 27th February 1823, a Resolution was passed by the Governor-General in Council,\* by which the vesting of the Opium agency of Malwa in a Bengal civilian was proposed. The reasons for this proposition were, 1st, The necessity of the Opium agent being placed immediately under the authority of the Board of Customs Salt and Opium; for as the purchase of Malwa Opium is intended to maintain the Opium revenue of the Presidency, the quantity to be purchased, and the terms to be offered must depend on the provision made in Behar and Benares, and on the views which the officers of the department and the mercantile community may entertain.† All instructions therefore to the agent should issue from the Supreme Government, and to that Government alone he should submit every requisite information with regard to his proceedings.

2d. Another reason for this proposition was the circumstance that the whole of the supplies required by the agent are raised by bills on the Bengal Province. However, before passing any final decision on the subject, the Governor-General in Council requested the sentiments of the Bombay Government on the subject. Previous to the receipt of any letter from the Bombay Government on the subject, the above Resolution of the Supreme Government, the Accountant-General of Bengal had brought to the notice of Government the ruinous rate of exchange at which the Opium agent in Malwa had negotiated his bills on Bengal. It is stated by the Accountant-General, that as he considered the Opium agent to have been under the authority of the Bombay Government, he did not attempt to exercise any control over that gentleman's credit.

Mr. Warden's Minute of the 30th of April, recorded in the Territorial Department as per margin,‡ defailing his sentiments with regard to the proposed measure of vesting the Opium agency of Malwa in a Bengal civilian, and of dispatching the whole or greater part of the Opium purchased in Malwa to Calcutta having been received, the Governor-General in Council proceeded to record his final resolution on the subject. The Governor-General observed§ that, though it had been declared in Resolution of the 12th November 1819, that the principles of a strict monopoly could no longer be followed, it was never designed to intimate that the Opium concerns were to be conducted according to the maxims of a free trade. So long therefore as the present system of a modified monopoly is continued, it appeared to be essential that the Opium business in Malwa and here, should be conducted as one concern, consequently the interference of the Supreme Government should pervade the whole system; for consistency of system is of all things important. For these reasons, the Governor-General in Council determined on confiding the office of Opium agent in Malwa to a Bengal civilian of rank and high standing, and possessed of judgment, experience and discretion.

In a note of Mr. Secretary Mackenzie, of 10th July 1823,|| it is observed that, as the price of Malwa Opium depends on the price it will fetch in the Chinese market, it is obviously our interest to bring up such a supply of Malwa as will prevent a glut in the Chinese

\* Political Consultations, March 21, 1823. No. 100.

† Paragraph 2.

‡ Territorial Department Consultation, June 12, 1823. Nos. 54, 55.

§ Political Consultations, June 27, 1823. No. 77.

|| Ditto, July 18, 1823. No. 43.

**Opium.**

Chinese market, and enable us still to derive a fair profit from our Bengal monopoly. In order to secure such a supply of Opium as will answer these objects, and to prevent a larger quantity being thrown into the market, it will not be sufficient to enter into mere engagements with the different chiefs for the prevention of the illicit trade, but we must give them an interest in the monopoly. This may be done by purchasing the Opium in the first instance at a moderate price, and allowing the chiefs a share in our net receipts. With regard to the total quantity of Malwa Opium to be purchased, it would appear (from the best information before the Government) that 4,000 chests, each containing two factory maunds, will be a sufficient supply; and as we cannot, in order that the temptation to smuggling may not be too strong, and to keep out the Opium of Turkey, expect above 600 or 700 rupees profit per chest, the profit on the whole would amount to 28,00,000 rupees. If it were necessary therefore to give a moiety of this, the remainder, or fourteen lacs, would be a larger profit than we have hitherto derived from Opium bought in Malwa. We should, at the same time, preserve our Bengal monopoly.

The internal consumption should of course be provided for by us at a cheap rate.

In conclusion, Mr. Mackenzie observes, that unless we are enabled to introduce a restrictive system into Malwa, it is to be feared that the supply of opium will be so superabundant as to render our Bengal monopoly of little value.

The deputy Opium agent having represented to Government\* that Opium purchased for the Honourable Company's sale had been stopped in Sindiah's dominions by that chief's officers, and a demand of duty been made, the Government in reply, directed the deputy Opium agent to pay the accustomed duty, pending the arrangement of a treaty on the subject with the Gwalior Durbar.

A reference had been made by the Bombay Government (13th December 1823) to the resident at Hyderabad, requesting him to prevail on the Nizam to prevent the transit of Opium through his dominions. As the resident in reply stated his inability to propose any such measure to the Nizam's government, the Bombay government forwarded to him copies of a correspondence which had passed between Mr. Russell, the former resident, and the Nizam's minister, from which it appears that the latter had agreed to prevent the transit of Opium through the Hyderabad territories.

In the Letter of Mr. Mackenzie, of the date per margin,† the arrangements entered into by the Opium agent in Malwa are approved and commended. It is stated that, as, from Mr. Swinton's report, it appears that the moment the price fell below sixty rupees per punsuree, the agents of a Bombay house began to purchase, the connection between ultimate Ports of destination and the province was completely established, and the prices in the latter must depend on those realizable at the former. The difference between them will be regulated by the risk, delay and expense of carriage, and it is necessary to add to these impediments as much as possible. This would be best accomplished by interesting the different chiefs in our monopoly.

Instructions having been issued to the resident in Rajpootana and Malwa regarding the

\* Political Consultations, Oct. 3, 1823 No. 41.

† Ditto, April 20, 1824. No. 93

the Opium system,\* it was proposed by Mr. Mackenzie that similar instructions should be addressed to the agent at Odeypore, directing him to make the best arrangement practicable with that state for the prevention of the export of the Opium. Compensation of course must be granted for any loss occasioned to the state by the prevention of the traffic. In the correspondence of the date per margin, † the political agent at Odeypore explains the route by which Malwa Opium is conveyed to Demaun via Odeypore. Jaisalmere, the mouths of the Indus, states that the compensation for which the Odeypore government might be induced to co-operate with us in preventing the export, would amount to near 50,000 rupees. This sum the Boards of Salt and Opium did not consider as too high a price for the co-operation of the Odeypore state.

Captain Cobbe having completed a treaty with the Maha Rana of Odeypore, in October 1824, a copy of it was dispatched to the Supreme Government. ‡ It consists of nine articles, by the first and second of which the Maha Rana agrees to prevent the sale and transit of Opium through his dominions. By the third, the compensation to be paid the Rana is fixed at 40,000 sonat rupees. The fourth article stipulates that, in order to prevent disputes or imputation of connivance on the part of the Rana's officers, the British agent is to have the control of all arrangements and checks necessary to the fulfilment of the treaty.

The fifth article provides for the supply of Opium for internal consumption by the political agent: sixth article provides for the confinement of Opium to the internal consumption: seventh, enacts that unlicensed Opium will be confiscated and delivered to the agent, who will pay for it the price current of Malwa: eighth, Half the value of the Opium confiscated to go to the informer: ninth, This agreement to be binding as long as the Honourable Company's restrictive measures exist.

In March 1825§ the Opium agent in Malwa forwarded a proposal to the Supreme Government for supplying the districts under Madras, Nagpore and Hyderabad with Opium sufficient for the internal consumption. The agent considered the 1,200 maunds, which was about double the quantity hitherto imported by smugglers into these districts, should be furnished by him.

The agreement concluded by Captain Cobbe with the state of Odeypore having met with the entire approbation of the Opium agent and the Board of Customs, Salt and Opium, that officer was directed to enforce the performance of the conditions of the treaty; and instructions were issued to the resident at Indore, enjoining him to conclude similar treaties with the different chiefs under his authority. The expediency of a similar agreement being entered into with the Jeypore state is also pointed out by the Board.

In consequence of the instructions to Mr. Wellesley,|| Major Caulfield, political agent at Kotah, concluded an agreement for the term of six months with that state. The terms of the settlement were stated by Mr. Swinton to be highly satisfactory, and that gentleman considered

\* Political Consultations, July 30, 1824. No. 20. Ditto, No. 21. † Ditto, Aug. 27, 1824. No. 24.

‡ Ditto, April 5, 1825. No. 54.

§ March 24. Political Consultations, April 15, 1825. No. 91.

|| Ditto, Aug. 26, 1825. No. 17 to 19. Ditto, Sept. 23, 1825. No. 21. Ditto, Sept. 30, 1825. No. 65. Ditto, Dec. 30, 1825. No. 60.

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considered that there would be no difficulty in renewing it, should it be approved by Government.

In pursuance of the system of compensation, the sum of 3,500 rupees per annum was granted to the managers of Ameer Khan's Pergunnah of Nemaherah in Meywar, in order to make up to that chieftain the amount of transit duties in Opium. In the letter of the Secretary to Government, addressed to the Board of Opium (in reply to their despatch announcing the temporary settlement made by Captain Caulfield with the Kotah government), it is remarked, that as the co-operation of the state of Kotah is very essential, it is much to be regretted that that state was not permanently included in the contemplated arrangements. With regard to the amount of compensation, it must be sufficient to interest the Raj Rana in our measures. By paying a fair average price for the quantity of Opium required by us, and by paying the Rajah either a certain fixed sum or a bonus on the quantity of Opium, say five rupees per punsuree, we should probably attain every object in view, even should the sum to be paid amount to one lack of rupees, the Government would not object, provided by paying this sum we should be enabled to prevent the export of the drug, and keep down the cultivation. The general plan of 1823 should be kept in view; the main object is to secure the co-operation of all the states (whose aid is necessary) in order to prevent the export of Opium to the coast; and it should be remembered that by no means follows that we are to give up the whole scheme because some of the former arrangements are inapplicable.

Another great object is to provide for the internal consumption of the countries to the north-west at the most moderate rate.

In the despatch of February 1826,\* the necessity of giving the state of Kotah an interest in the success of the restrictive measures is again adverted to. It is essential that the quantity of Opium to be taken by us, and the price to be paid, should be fixed. The quantity should not exceed 3,000 maunds, and on that alone is a bonus to be paid, or, should the bonus be given up, a fixed rate may be given.

The amount of bonus may be raised to seven rupees per punsuree on 3,000 maunds if necessary.

An engagement was concluded by Captain Alves with the Amjeerah authorities in September, † by which they bound themselves to co-operate in our restrictive measures. The quantity of Opium to be purchased by us was fixed at eighty maunds, at thirty rupees per punsuree; and a bonus of 5,000 was agreed on, provided the Amjeerah authorities punctually fulfilled the conditions of the settlement.

In a despatch from the resident at Delhi, dated as per margin, ‡ addressed to the Governor-General whilst absent in the Upper Provinces, is contained the first remonstrance of the Kotah government against our restrictive system. It is therein stated, that in the year 1826, 4,000 maunds, at thirty-three rupees per punsuree, had been agreed on; that, in consequence of our system, persons of all ranks were exposed to a search for Opium on quitting the city, the town frontiers of Kotah; that the people were in consequence

quence discontented, and a loss of 60,000 rupees had been incurred by the Raj Rana; lastly, it is stated that the monopoly had a tendency to cramp the trade of the country, and divert capital from its natural channel.

In a despatch noticed in the margin,\* Sir C. T. Metcalfe proceeded to record his sentiments, both on the complaints of the Kotah government, and on the general question of the effects of our restrictive system on the welfare and prosperity of Central India. He expresses his conviction that the treaties already concluded with some of the native powers in Rajpootana were procured by an improper exertion of our irresistible influence; that such measures are alike detrimental to the people, to the princes, and must ultimately be so to us; and such being the state of affairs, he recommended that we should resign our pecuniary profits, rather than forfeit our name and reputation.

The acting political agent at Kotah (E. Gordon, Esq.), in answer to a Letter from Sir C. T. Metcalfe, on the subject of Opium, states his opinion,† that our attempts to secure the monopoly of Opium in Rajpootana, are looked upon with universal horror; and "that complete success can only be attained by such a mass of evil, as must make every good and wise man shudder."

In February 1827,‡ a further representation was made to the Kotah government,§ praying to be released from that part of its agreement,|| relative to the Sath Muhlā, held in farm by the Raj Rana, from Scindia. In consequence of the complaints of the Kotah government, a Letter was addressed to the resident at Indore, under the orders of the Governor-General,¶ requiring from him and the Opium agent conjointly, specific information with regard to the principal objections urged against the restrictive system.

In the answer furnished by the Opium agent to the above queries of Government,|| in which Mr. Wellesley expresses his entire concurrence, it is stated:

1st. That no extraordinary influence was exerted or was necessary, to obtain the consent of the several states of Malwa, to our Opium arrangements; that they readily entered into them, for they saw it was their interest to do so; and that, though some, in particular Holkar's minister, Tantia Jogh, publicly expressed dissatisfaction at having signed the treaty, this was merely, as Tantia Jogh himself intimated privately, with a view of keeping up appearances with the Soukars.

2d. That the smell of Opium is so very strong as to render any vexatious search unnecessary; and that no evil is practically experienced on that account.

3d. That previous to our pacification of Central India, little Opium was exported; that is to say, the produce previous to 1817, averaged 10,000 to 15,000 maunds, whereas in 1823, it was from 35,000 to 40,000 rupees.

4th. That the price paid by us is fair and liberal, and enables the Ryot to pay his increased rent.

5th. That

\* Political Consultations, Feb. 9, 1827. No. 10. † Ditto, Feb. 9, 1827. No. 11.

‡ Ditto, Feb. 23, 1827. No. 25. § Ditto, March 30, 1827. No. 9. ¶ Ditto, June 22, 1827. No. 50.

5th. That the extension of poppy cultivation did not benefit the Ryot, as his rent was proportionably raised.

6th. That the Soukars alone were discontented with or injured by our arrangement.

7th. That if Jyepore and Kishengurh would co-operate with us, the export from Kotah might be stopped without that state's entering into our measures; and that it was the conviction of the possibility of this circumstance, that induced the Raj Rana of Kotah to conclude the settlement.

8th. That the existing treaties, if fully acted up to, prevent exportation from Scindia's territories in every direction, except by rounding Kotah to the E. i. e. *via* \* Kichwara and Sheepoor, into the Jyepore state.

Lastly. That the alarm of Scindia's manager at our measures, and their anxiety to be included in our arrangements, show that our measures are efficient, and that our treaties are considered fair and liberal.

In consequence of the Opium agent concurred in † by the resident at Indore, instructions were issued to the latter officer ‡ approving and confirming the measures which had been entered into for the preservation of our modified monopoly, as follows:—

1st. The Treaties concluded by the resident with the states of Indre, Dhar, Amjheera, Rutlam, Silonee and Seetam were confirmed and sanctioned.

2d. Instructions were given to the agent in Bhopal to enter into Treaties with the states under his authority.

3d. It was left to the option of the Kotah Rana to confirm his engagement or not; but his assertion with regard to the Sath Malla formed from Scindhia, was stated to be unfounded, as the late Maha Raja Dowlut Rao Scindhia repeatedly signified his willingness to co-operate in our restrictive measures.

The sentiments of the Governor-General § were also transmitted to the resident at Delhi, who was further directed to authorize the political agent at Kotah to enter into a fair and free negotiation with the Raj Rana on the subject of our modified monopoly.

In a Despatch of the 20th September from the political agent at Odeypore, the success of the restrictive system is mentioned, and an enlargement of his establishment for the preventive service solicited.

The agent states, that he had heard of no dissatisfaction being caused by the system; that so long as the internal consumption is fully and cheaply provided for, the Ryot will be satisfied; and that the ruler will remain contented as long as our compensation to him is fair and liberal, which it is at present. Sir C. Metcalfe, in a Minute recorded on the 10th October, || decidedly objected to any further grant of establishment on account of our Opium system to the political agent at Odeypore. He declared his opinion that the exercise by the political agent of the powers of search and interference was unjustifiable, as injuriously affecting the sovereignty of the Maha Rana of Odeypore in his own dominion, and contrary to Treaty; that a revision of our Opium system

\* Original.

† Original.

‡ Political Consultations, June 1, 1827. No. 99.

§ Ditto, June 1, 1827. No. 100.

|| Ditto, March 21, 1828. No. 72.

system in Rajpootana is most necessary, or that should the Governor-General in Council not be disposed to revise the present arrangements, a thorough inquiry be made, for the purpose of ascertaining, to satisfaction, the feelings that exist in foreign states on this subject.

Mr. Bayley, in a Minute of the 28th November,\* expressed his opinion that the right of search and stoppage exercised by the political agent in Odeypore, was justified by the Fourth Article of the Opium Treaty; that the Princes in Malwa are liberally remunerated for their concurrence in our views; and that the interests of the Ryots are not materially involved in the question. In deference, however, to Sir C. Metcalfe's decided opinion of the ruinous effect of our restrictive measures, Mr. Bayley coincided in Sir C. Metcalfe's proposition, that a full and faithful inquiry be instituted on the subject, provided the conduct of such inquiry be entrusted to a competent and unprejudiced individual.

In the Minute of the Governor-General of the 1st December 1827,† his Lordship expressed his disinclination to abandon our present restrictive system in Malwa, but at the same time considers it expedient that the proposed augmentation to Captain Cobbe's establishment be deferred until the inquiry proposed by Sir C. Metcalfe, and approved by Mr. Bayley, be concluded. In a subsequent Minute of Sir C. Metcalfe again urged his sentiments with regard to the pernicious effects of our Opium monopoly. He further observed, that from the new state of things which has arisen in Meywar, viz. the employment of bands of mountaineers in the forcible transport of Opium, it appeared that any restrictive measures on our part must be unavailing; and that, in his opinion, the Odeypore Rana is a sovereign Prince, the independence of whose internal rule we are bound to protect, even should the pecuniary sacrifice be as heavy as has been apprehended.

With reference to a Despatch of 27th January 1828, from the acting agent in Harowtee,‡ Sir C. Metcalfe again brought the subject of our Malwa monopoly to the notice of Government, in a Minute recorded as per margin.|| From this Despatch, it appeared that an affray had taken place in Boondee, between the Opium smugglers and the Raja's troops, when a relation of the Raja was killed. Sir C. Metcalfe implored the Government to revise the present system, which is so destructive of human life, and thus check the feeling of discontent and dissatisfaction which exists in consequence of our Opium restrictions.

(Signed) G. T. LUBINGTON.

## PART II.

IN consequence of the foregoing discussions, it was determined at the commencement of Mr. Bayley's administration, to institute a full and faithful inquiry into the effects produced

\* Political Consultations, March 21, 1828. No. 73. † Ditto, March 21, 1828. No. 74. ‡ Ditto, No. 75.

§ Ditto, March 21, 1828. No. 76. || Ditto, March 21, 1828. No. 78.



produced by our arrangements for restricting the growth and suppressing the free exportation of Malwa Opium, on the interests and feelings of the princes and people of all states affected by their operation. Circular instructions were accordingly addressed to all Political Officers employed in the Malwa and Rajpootana field, on the 21st March 1828,\* indicating the principal heads of inquiry, and calling upon each to state candidly and unreservedly the result of his observations and reflections on the whole question. The Bombay Government was, likewise, requested† to furnish a communication of its sentiments.

Mr. Wellesley, the President at Indore, has as yet sent no direct reply. The call was repeated on the 27th June.‡ He stated in answer as follows:§ “I consider my replying to your Opium circular of the 21st March last, would only be subjecting myself and Government to a supererogatory trouble, after having already in my Despatch to you of the 16th March 1827, afforded replies conjointly with Mr. S. Swinton, the late Opium agent, to the queries of a similar tenor before addressed to me, and having expressed my sentiments on the subject on various other occasions of a specific and practical nature, as they arise in the progress of the concern.” . . . . . “I felt too sensible, that to enter into disquisitions on points of dubious and speculative nature, besides taking up time which I could ill spare for such an undertaking, would be only affording matter for continued debate and controversy, tending to keep up hesitation and indecision regarding the arrangements, to the prejudice of the Company's interests, and would be better, therefore, avoided by me.” This letter having been submitted to Government, Mr. Wellesley was informed, on the 22d August,|| that the Governor-General in Council considered it to be his duty to furnish distinct and specific answers to the several heads of inquiry stated in the circular letter of the 21st March last, and desired accordingly that he would prepare and forward a reply thereto with the least further delay practicable.

The following is the substance of the answers received.¶

Sir E. Colebrooke concurs entirely in the opinions expressed by his predecessor, Sir C. Metcalfe, on the Malwa Opium question. He combats in detail the statements and arguments of the Opium agent, Mr. S. Swinton, concurred in by the resident at Indore, in defence of the present system, which have already been noticed above. Sir E. Colebrooke doubts whether the acquiescence of the native Princes in our Opium treaties could in any instance be termed, properly speaking, voluntary, and considers that the right of search for what is called Contraband Opium is, in all probability, made an instrument of extortion and oppression. Admitting the export trade of Malwa Opium in any extent to be modern, and the result of our own measures for the pacification of Central India, Sir E. Colebrooke questions our right to deprive the native Princes of the benefit of the improved condition of things effected by ourselves. The price paid by us for the Opium delivered under treaty is not, in his opinion, a remunerating one, and our measures to reduce the cultivation of the poppy could only be carried into effect by a local inquisition

\* Political Consultations, March 21, 1828. No. 79. † Ditto, March 21, 1828. No. 80.

‡ Ditto, June 27, 1828. No. 48. § Ditto, Aug. 22, 1828. No. 33.

|| Ditto, Aug. 22, 1828. No. 34. ¶ July 9, 1828.

tion of the most vexatious and oppressive nature. Sir E. Colebrooke is of opinion that our Opium arrangements must have excited discontent and suffering among the states and people of Central India, though he cannot speak from his own personal knowledge. They are also incomplete, as no treaties can be effected with Jyepore, Joudpore, and Kishengurh, or with Sindia's Government; and it is impossible to prevent the exportation of the drug in large quantities through the Bheel tracts of Oudeypore and Kotah. All our precautions being thus insufficient to block up the passage even through Oudeypore and Boondoe, where our restrictive engagements have been accepted, and a new outlet having been found through Kishengurh and Marwar, where no restrictions exist, a question arises, whether the half measures which we are able to enforce, are worth maintaining at the risk of the dissatisfaction to which they give birth. Even if we could be satisfied that the agricultural classes have nothing to complain of in regard to the arbitrary price affixed upon the produce of their labour, still the dissatisfaction of the mercantile interest, or what is called their words, their despair, at the prospect of losing the profits on the trade of the chief natural export of the country, must be deemed entitled to some attention. Colebrooke concludes by suggesting that it might be more practicable and to limit the export of Malwa by sea, by acquiring the port of Demas, can be to limit the cultivation and intercept the transit of the drug the whole extent of Central India.

Mr. Clerk\* states, that Jyepore is no producer, and consequently no exporter of Opium. Neither is it a consumer of the drug to any great extent. The only effect felt in that territory from our restrictive measures, was in the first instance a rise of price in the drug required for internal consumption, which was subsequently obviated by the abundant contraband importation of the Meenahs. Mr. Clerk notices that the Court of Jyepore exult and triumph in being exempt from the Opium engagements which are considered to have been enforced on neighbouring states in violation of their independence.

Mr. Cavendish† observes, that none of the states under his official cognizance, have entered into Opium engagements. The rulers of Joudpore and Jessolmere, complain of the scarcity and dearness of Opium, the latter of the falling off of his transit duty. The Kishengurh Rajah is well pleased with the arrangements, as his country has become a grand emporium for the drug. Mr. Cavendish also gives some details regarding the extensive exportation of contraband Opium from Malwa, by the Meenahs of Oudeypore, Kotah and Bundu, which is either sold for money at Kishengurh, or there exchanged for goods; the Rajah of that petty principality having formerly declined to enter into a treaty with us.

The territory of Sirowby‡ is in no way affected by our Opium engagements, Captain Spiers states, however, that some of the mercantile classes who had recently returned from Malwa to their ancient homes in Sirowey, in talking of those arrangements, question their

\* Officiating Political Agent at Jyepore, April 20, 1824. † Political Agent in Ajmeer, April 19, 1824.

‡ Sirowey, May 31, 1824.

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their justice, and describe them as cramping all speculation in trade, and as being likely to ruin the commerce of Malwa.

Major Caulfield \* is deeply impressed with dissatisfaction engendered by the system under discussion, which is unpopular with every individual, however high or low he may stand in society. The forced reduction of the cultivation of the poppy must injure the Ryots of Malwa, as they find difficulty in substituting any other article yielding an equal profit. Opium being the staple commodity of the Kotah country in particular, the suppression of the exportation must be attended with very alarming deterioration of the revenue of the Prince, and with serious loss of profit to the merchants. The ruler of Kotah may be considered, perhaps, as receiving from the British Government a fair indemnification personally, and as a sovereign for the loss inflicted by the Treaty, though not for what he might gain, if like the celebrated regent Zalim Singh, he entered largely into commercial transactions; but in a political light he must be a great sufferer, as the present Raj Rana has incurred much odium among his subjects, by concurring in our views. The manner in which the search for smuggled Opium is conducted at Kotah, is considered by Major Caulfield to be highly offensive and oppressive to the people; and the frequent remonstrances which, to ensure the due enforcement of the whole system, our agents are obliged to address to the native governments, cannot be otherwise than painful and distressing to them. The treaties were entered into by the native Princes, on a principle of deference to the supreme power of the British Government. They consider them injurious and humiliating, and would gladly be released from them, provided they are not exposed to the consequences of other and worse measures adopted in their stead. Major Caulfield does not think that any modification of our Treaties, which he states to be as liberal as they well can be, would render them palatable to, or consistent with the interests of the states in which the poppy is cultivated. He doubts whether any great actual reduction of the poppy cultivation has been as yet effected under the system introduced in 1825, and believes that a very considerable quantity of the drug finds its way from Malwa and Rajpootana to Demaun, spite of all our restrictions, it being transported both in small quantities by separate individuals, and by large armed bands of Meenahs, who set the constituted authorities at defiance.

Lieutenant Hislop enters into a highly able and comprehensive discussion of the whole question, under six different heads. The results and conclusions\* at which he arrives are in substance as follow :

Between 1819 and 1825, the price of Opium varied from 21½ to 8½ rupees the seer; in 1825, they fluctuated between 8 and 10 rupees the seer. In 1825-6, when our restrictive system was introduced, the price suddenly fell to about rupees 4½ the seer, in the Kotah territory, whilst in the neighbouring dominions of Scindia, it retained its former rate. The difference has gradually been lessening, but still amounts, in the average, to nearly one rupee in the seer. Lieutenant Hislop doubts, whether any thing can be found in the history of Sahookaree rapacity, of which so much has been said, to equal the injury inflicted on the cultivation of the soil by this arbitrary and enormous curtailment of its natural

natural profits. Lieutenant Hislop is also of opinion, that the price paid to the cultivator under the present system (pages 23 the punsaree) is insufficient to enable him to meet the contingencies of seasons; and that he is still further injured by that article of the Treaty, which provides for the forcible reduction of the Opium culture to the extent of one-fourth, as the general state of the market for agricultural produce is not such as to afford him any other more profitable mode of employing his labour and.

The injurious effects of our measures on the interests of the mercantile body, cannot be questioned. The consequences of a change from a state of constant war and internal disturbance, to one of peace and tranquillity, are said to have been an excessive production, and a glut of all commodities. The increasing demand for Malwa Opium, subsequent to 1819, had brightened the hopes of the merchants of Central India, but when that profitable source of traffic was closed against them by our interference, their ruin as a body became complete.

• Lieutenant Hislop then proceeds to show that the Raj Rana, if his own statements are accepted, incurs an additional annual expenditure of Rs. 32,901, in consequence of his Opium engagements with the British Government, or, taking the view of the subject most favourable to ourselves, his utmost gains cannot be said to exceed Rs. 15,354. This sum must form a poor compensation, indeed, for the sacrifice of feeling, both personal and political, which our arrangements occasion to the ruler of Kotah. Strong instances are adduced by Lieutenant Hislop, to show how degrading our system of searching for and seizing contraband Opium necessarily is to the Prince, and insulting and oppressive to the mass of the community, in its practical operation, although every disposition may exist on the part of the agent to exercise his interference in a spirit of mildness and forbearance.

Lieutenant Hislop denies that the states of Boondoe and Kotah voluntarily entered into the Opium Treaties with us; and proves, by a reference to the Public Records, that throughout the discussions they manifested the utmost aversion to those engagements; that the Boondoe authorities submitted to them only when the question was reduced to a choice between the friendship or enmity of the British Government; and that the Raj Rana, with the strongest impression of their injurious effects, had always declared that he agreed to them solely in deference to our will and pleasure.

The acting agent thinks that it is impossible to effect reduction to the extent desired, in the cultivation of Malwa Opium, without exercising a direct scrutiny and interference which the Treaty does not give us, and against which the Raj Rana would certainly remonstrate in the strongest manner. Details are submitted at length regarding the extent to which the unlicensed traffic in Opium is carried on by the N.W. route through the Oudeypore and Boondoe countries, and the serious character of daring violence and enterprise which it has latterly assumed. The great and prominent defect in our measures is that they do not include much more than one-half of the territory in which the poppy is grown, the whole of Scindia's extensive possessions in Malwa being exempt from their operation. Such are the nature of the intervening countries, the adventurous daring and turbulent character of some classes of their inhabitants, and the high rewards given by the Sahookars, that, with every exertion of the native governments, who receive pecuniary compensation from us, it is impossible to stop the exportation. The troops  
of

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of the Boondee state have already suffered severely in their conflicts with large armed bands of smugglers; yet it is calculated that, during the last year, not less than ten or eleven thousand maunds were carried out of Malwa through the Boondee and Oudeypoor territories, whilst the quantity seized and confiscated did not exceed 600 maunds.

Deeply convinced that the just and due maintenance of our supremacy in Central India is incompatible, as well in principle as in practice, with our monopoly of Malwa Opium, Lieutenant Hissar thinks that the wisest and most politic course would be to absolve such states as may desire it from their engagements, even though the utter ruin of the Bengal monopoly should be the consequence. At the same time that this option is allowed, he conceives that a modification of the existing system might be offered for their free and willing concurrence, having for its leading objects to make the Malwa monopoly to the utmost extent beneficial to the states and people who are affected by it, and, at the same time, to maintain the value of the Company's Bengal monopoly. The first step for the accomplishment of the former object, and which at the same time would not be inconsistent with the latter, is to divide more fairly and equitably than at present, the profit drawn by the British Government from the sale of the Malwa Opium. Thus upon the quantity furnished by the Kotah government annually, that state receives only 1,62,000, whilst we take the lion's share of 5,86,920. The acting agent concludes, however, by observing that, on the whole, he feared it is not possible to strike out any modification of the existing system, by which we can secure our object of limiting the supply of Malwa Opium, and at the same time sufficiently conciliate the several interests affected by our arrangements. The cultivator wants unrestricted cultivation, the merchant perfect freedom of trade, and the ruler what will satisfy these two most important classes of his subjects, and preserve the independent authority and dignity of his government. In fact, with every one of these wants, the due enforcement of our restrictive system is quite incompatible.

Major Sutherland\* commences with referring to a Letter which he had addressed to the resident whilst acting as political agent in Oudeypore, at the end of 1826, reporting on the complaints which had reached him from several of the inhabitants of the provinces, on the subject of our Malwa Opium arrangements. He thinks that the interests of the cultivators are less injuriously affected by our arrangements than those of either the merchants or the rulers of the states to which they extend, under the supposition that a remunerating price is given, and that no measures have been taken for directly limiting the quantity of the poppy cultivation in the province. On the other hand, there can be no doubt but that the interest of the bankers and merchants of Central India have been most injuriously affected by our measures, and they loudly complain of them. Opium is now considered the great staple commodity of these countries, and our treaties, which bind their rulers to give up to us all that is produced in excess of the quantity required for home consumption, are nearly destructive of all foreign trade with other regions of India, and with those beyond the Indus. Major Sutherland considers the insolent and overbearing

\* Major Sutherland, formerly Head Assistant to Resident at Delhi, and Acting Agent in Meywar, dated April 25, 1828.

overbearing conduct of the spies and menials employed under the political agent in Meywar, in enforcing the restrictive system, to be one of its worst evils, and mentions an instance which had come under his own observation, of the excesses they are in the habit of committing. Neither persons nor property can pass through Meywar without undergoing a degrading and vexatious search, if such be their pleasure. That such a system is injurious to the honour and independence of the state in which it is carried out cannot be doubted. Even the Maharana of Oudeypore appeared to feel it as such, although caring little for the interests of his people, so long as he derived a profit from the compensation granted to him in lieu of transit duties formerly levied on the drug. The minister's statement left in Major Sutherland's mind the impression that the treaty with the Oudeypore government had not been negotiated on terms of equality, but that Rana's assent being required by the political agent, it was given. Major Sutherland further thinks that all our Opium treaties in Rajpootana have been submitted to from deference to the will of a superior power, and never cordially and voluntarily adopted. Those states which have kept clear of them have obtained credit in the general estimation. Another evil of no small magnitude is the difficulty which those to whom Opium is a necessary of life experiences in procuring the drug, and the high price at which it is procured under the existing system. Although the search for contraband Opium has been carried to a greater extent in Oudeypore than elsewhere, yet in all quarters the inquisitorial powers with which our servants are necessarily vested, must be alike offensive to the rulers and vexatious and oppressive to the people, and consequently odious and unpopular. Notwithstanding the harassing measures pursued to check it, a considerable quantity of Opium is smuggled into countries beyond our reach, even through the Oudeypore territory. In fine, considering it quite impossible to reconcile our interests in the question with those of the other parties concerned, Major Sutherland's opinions are entirely adverse to the maintenance of the existing attempts at control and prevention.

Captain Cobbe,\* who arranged our Opium Treaty with the Maharana of Oudeypore, is of opinion that the cultivators in that territory have been very slightly affected by our restrictive measures in any way, certainly not unfavourably. The high tax levied in Meywar on the lands appropriated to the poppy, and the low comparative estimation in which the drug produced there is held by the Rajpoots, are probably the causes, he observes, why the cultivation has always been very limited, and has never, in fact, nearly equalled the local consumption.

In considering the effects of the restrictions on the mercantile classes and general trade of the Rana's territories, Captain Cobbe enters into some detail. As far as the direct trade is only concerned, he maintains that they have not been disadvantageous; but it is obvious, he adds, that the transit trade must suffer materially, "except a barterable substitute for the drug can be found." He does not think that it would be difficult to provide such a substitute, and is of opinion that practically the restrictive system has (confining his observations to Meywar) occasioned little or no loss to the cultivating or mercantile

mercantile classes, and that with a little attention on the part of the Rana's government, it may in a few years be rendered advantageous to his country.

Captain Cobbe asserts, that to the Maharana personally our arrangements are certainly favourable, and that the treaty with him was entirely voluntary on his part, and approved by his son and principal officers after full and free discussion. The only object of interest to that prince and his advisers seemed to be to secure the largest possible amount of bonus or remuneration. Since the conclusion of the treaty, the enormous sums derived from the confiscations have unquestionably rendered it a very profitable engagement both to the Maharana and to many of the chiefs and other inhabitants, who have been successful in intercepting the illicit convoys, and consequently, so far from wishing to cancel the present agreement, both the sovereign of Odeypore and his chiefs would regard the abolition as a very severe misfortune, and anxiously deprecate it.

The route through Meywar is so direct, short, and in every way convenient, that Captain Cobbe conceives a constant and vigilant attention on the part of the British officer resident at that court will be absolutely necessary for some years to come; but he is sure that the late ruler did not, and firmly believes that the ruling prince does not, consider the mode in which that vigilance is exercised as incompatible with or encroaching on his sovereign rights. Such indeed is the want of confidence which they feel in their own kamdars and public officers, that nothing would induce the Odeypore government to take into its own hands the charge of managing the system of preventive measures. Captain Cobbe also denies that the mode of conducting the system of search and seizure is vexatious to any except those concerned in the illicit traffic. In support of this view he goes into some explanatory details.

Finally, Captain Cobbe declares his conviction that but a very small quantity of Opium has passed through Meywar, and the very heavy seizures made and daily making in that territory, combined with the enhanced price of Opium at Pooee, would seem to show that the measures in force under his superintendence have been completely effectual.

Major Fielding\* confines his answer to some general observations on the reluctance indirectly manifested by the Durbar of Gwalior to enter into our Opium engagements, and a recommendation that we should not press the proposed Treaty on the Scindia state.

Captain Borthwick† thinks that our Opium Treaties in Malwa have produced a certain degree of dissatisfaction, chiefly on account of their having been only partially introduced into that region. The merchants, he observes, are doubtless discontented at being excluded from all participation in the high profits yielded by the external trade in the Opium; but even to them the arrangement has not been without benefit. It has entirely put down that system of excessive and inordinate speculation which prevailed among the Sahookars, to the irretrievable ruin of many, a system which had begun to pervade all their dealings, and was the cause of frequent and urgent appeals to the local political authorities from different authorities for their interference to stop it. It was not until the introduction of the Opium agent that the gambling system of the Malwa Sahookars, which

\* Acting Resident at Gwalior, April 24, 1826.

† Captain Borthwick, Political Agent at Mahedpore, May 14, 1824.



which had been the ruin of thousands, was put down. If our arrangements were extended to Scindia's districts, and the stipulation enjoining reduction of poppy cultivation modified, Captain Borthwick conceives that all dissatisfaction on the part both of the rulers and the cultivating class would cease, and their engagement with us would be received by them as one conferring secure and substantial benefit. The rulers in the Mahedpore circle, as it is, admit that the prices which they receive for their Opium, including the bonus and profits, is highly liberal, and dwell with satisfaction on the security and regularity of payment with regard to the cultivators; they never before received so high a price for their produce as they do now, excepting for a short period immediately preceding the introduction of the present system, during which Opium was raised by excessive speculation to an unparalleled value.

Captain Borthwick declares, that he had not found it necessary, for the due enforcement of the stipulations of the treaties, to deviate in the slightest degree from the general principles by which the exercise of our political superintendence in Malwa has been regulated, or to exercise any minute scrutiny or rigid control, at variance with the sovereign rights of the native states. The system of prevention he considers to have been effectual in his circle, and not a single attempt has occurred in that quarter to force Opium out of the province by armed parties. The preventive system, no doubt, has its attendant evils in the encouragement which it gives to informers, but these affect chiefly the smugglers and others who act in collusion with them. The reduction of cultivation has been trifling, and ought not, he thinks, to be insisted on.

Captain Borthwick states, that no means in the remotest degree compulsory, were resorted to by him to obtain the concurrence of the chiefs under his authority in our treaties. After fully explaining the strict prohibitory regulations that were in force against the transportation of Opium through our own territories, and the means we would endeavour to obtain\* to prevent its passage through those of our allies on the confines of the province, and adding such reflections on the ultimate consequences of the extravagant speculations in Opium, which prevailed at the time as those proceedings suggested, he left each and all the states and authorities concerned, to accept or decline them as they might think fit; clearly and distinctly giving them to understand, that it was optional with them to do so or not.

The opinions of this officer coincide in substance with the foregoing statements and sentiments of Captain Borthwick. He does not consider the existing system to be oppressive, injurious or productive of general dissatisfaction; nor does he admit it to have failed in its operation. It occasions loss, however, he acknowledges, to the wealthier class of merchants, who are thereby excluded from a profitable branch of trade. He recommends the extension of the system to Scindia's districts, and is of opinion, that the native chiefs and princes within his circle are not desirous of receding from their engagements. Captain Pringle adds, that when any natives have insinuated in his presence aught against the justice of our Opium measures, he has requested them to consider for a moment the great expenditure of the British Government in Malwa, incurred



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incurred entirely in maintaining the public peace, a matter in which their interests are principally concerned, compared with the insignificant amount of its receipts; and also the great benefits which have accrued to the different chiefs, by being relieved from the maintenance of the bands of foreign mercenaries whom they were obliged to support formerly, to secure their very existence, and who not only devoured the substance of their masters, but preyed also on the vitals of their subjects.

Only one state in this division is under Opium engagements, that of Peertaubghur. Lieutenant Pasley\* does not think that the agreement is looked upon favourably there, or that it is conducive to the prosperity of the Raj; but does not consider its stipulations as derogating to the Prince, or the mode of conducting the search for smuggled Opium as injurious to the people. He is of opinion, that until Scindia enters into engagements similar to those which have been concluded with the other states of Malwa, no great advantage will ensue to the British Government from the maintenance of the present system.

The districts in which this officer† is employed are either British territory, or held by us under a permanent lease; and his answers do not throw any light on the general question.

Captain Alves‡ states, that in 1824, whilst employed under the orders of the resident at Indore, he concluded treaties for the restriction of cultivation, and for the future yearly supply of Opium, with the chiefs of the petty principalities of Dhae, Dewas and Amjhera. Those chiefs evinced a perfect willingness to enter into the proposed arrangements, more perhaps from a sense of the obligations they owe to the British Government, than from any particular wish for such engagements. In carrying their provisions into effect, Captain Alves had no occasion to adopt any measure which would involve the smallest sacrifice of the existing good feeling on the part both of the chiefs and their ministers towards our supremacy. He thinks that no material decrease of poppy cultivation has as yet taken place in Malwa consequent upon the new system; and that until some permanent arrangement is entered into with Scindia, no extent of internal interference and vigilance will ensure the prevention of illicit exportation.

The States under the Bhopal agency, who both furnish Opium and are bound to aid in preventing its exportation, are Bhopal itself, Rajgurth, Nursinghur and Kilcheepore. Captain Alves adverts to the measures pursued when we first appeared in the Malwa field as Opium purchasers, and states his belief that a want of system in the commencement of our operations did irremediable injury to the Company's interests, excited strong feelings against all our subsequent measures, and deprived us of that co-operative aid, which, under better management, we might have been able to secure from the people of the country. He considers that the evils which our system is believed to have created, extend chiefly to the Sahookars, by diminishing their transactions and rendering their profits small and uncertain. Some loss must be occasioned both to the Chiefs and Ryots, if a reduction of the cultivation should take place, which has not hitherto been the case; and

\* Lieut. Pasley, Acting Agent in Saugor and Kauntal, May 12, 1828.

† Acting Political Agent in Nimar, Captain Spiers.    ‡ Captain Alves, Ditto in Bhopal, April 24, 1828.

and it seems doubtful whether in the larger states any direct measures for suppressing the growth of the poppy would be attended with success. If Opium engagements were made with the Gwalior Durbar, we should be enabled gradually to withdraw from that system of internal scrutiny, and the frequent employment of spies and emissaries, which undoubtedly constitute the most offensive part of our arrangements, and limit the use of the right of search to special occasions only, where universal and excessive smuggling might be discovered. Until Sindia's territories are included in our plan, the most extensive system of smuggling will continue to prevail, spite of all our precautions. The continuance, for any long time, of the present state of things, arising out of the system now in force for the protection of our Opium monopoly, must, he conceives, be viewed by Government as full of objections; our objects are but indifferently attained by a perseverance in it; whilst it may be presumed to keep alive a feeling of irritation and anxiety in the minds of the chiefs, in whose territories our emissaries are secretly employed, and of the Sahookars, whose uncertain success in smuggling must keep their finances in a state of constant fluctuation.

Captain Alves hesitates to recommend any essential change in the present system, because he believes that much has been already effected to prevent the Opium reaching the coast in large quantities, and because our retiring from interference at this late period would not gain for the Government a just appreciation of the motives which dictated so beneficent and conciliatory a measure. He suggests, however, the gradual withdrawal from that internal scrutiny and vigilance, which places in the hands of low emissaries a power they must often abuse, and repeats his conviction that this might be done with safety, if Scindia's districts were brought within the sphere of our operations.

Captain Johnston,\* the assistant, in a memorandum which accompanies, declares that the treaties concluded with the above states were entered into with the free will of all the parties, though perhaps they would be better satisfied to be without them. It is allowed by all that the treaties are injurious to the Sahookars. The situation of the cultivators is less affected by them, but they also are thought to suffer. The state of Bhopal has always made objections to restricting its cultivation within fixed limits. The plan of keeping establishments within the territories of other states for the seizure of smuggled Opium is necessarily offensive, and the misconduct of persons placed in situations of temptation, such as this is, cannot wholly be prevented; but these restraints cannot be dispensed with, and there is no saying to what extent smuggling might be carried if we neglected all precautions of the kind.

Mr. Maddock† observes, that Eastern Malwa is only the belt or termination of the Poppy District. The quantity of Opium which it produces is a very insignificant portion of the whole produce of Malwa; and this tract is only of importance to the general system, as it forms the eastern boundary of the Opium country, along which it is thought necessary to adopt prohibitory measures against the transit of the drug.

The effect of our Opium Treaties in Eastern Malwa cannot, Mr. Maddock thinks, be injurious to the Ryots in general, for he does not see how they are likely to diminish the profits

\* Captain Johnston, formerly Assistant at Sehor, and Acting Agent.

† Mr. Maddock, Agent to the Governor General, S. and W. Territories, May 11, 1829.

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profits they derive from the cultivation of the poppy, the high or low price of which little affects them, further than leading to more or less land being employed in that species of cultivation. This opinion is founded on the belief that the Government demand always increases according to the profits of the Ryot, and the reward of his labour will not long remain greater in one kind of employment than another. But the poppy cultivation is advantageous to a village, as it gives employment to a number of its inhabitants at a season of the year when there are no other crops to attend to; and if a large portion of the poppy fields has been thrown out of cultivation by the stipulations which chieftains have entered into to that effect, the agricultural population must have lost employment and suffered accordingly. Mr. Maddock is not aware whether the cultivation has actually been diminished under the Bhopal agency, as the chieftains in that circle have not been asked to diminish it. He conceives, indeed, that it would be regarded as a very arbitrary and tyrannical act on the part of any of the rulers in Malwa to compel their Ryots to diminish the extent of their Opium fields, and that any vigorous attempts to curtail the cultivation and limit it to a fixed amount would be productive of general oppression and individual injury, and bring a load of odium on the British Government. Such being the case, it has always struck Mr. Maddock with surprise that the object of restricting the cultivation of Opium was made a matter of direct stipulation, and that we did not rather leave the extent of the poppy cultivation to be regulated by the same cause that increases or diminishes the production of any other article, viz. the demand for it in the surrounding markets.

The great Sahookars of the country, the former purchasers and exporters of Opium, are perhaps the only class who have any good ground to complain of our measures; and it is no satisfaction to them to be told in reply to their complaints, that their own speculations in Opium on an extensive scale are of recent origin. Admitting, however, that they have suffered loss, it does not follow that they have sustained injustice. In all governments, measures must occasionally be necessary for the public good, which cannot be enforced without injury to some particular class. No attempt to change the direction which the industry of a people has taken can be made without individual injury, though public benefit result from the change. In the present instance the security of an important branch of the public revenue is an object of more consideration than the profits of a few great merchants in Malwa. Our measures as above, however, must of course be unpopular, although injustice cannot fairly be charged to the British Government in their adoption.

With regard to the effects of our Malwa Opium system on the native Princes, Mr. Maddock is of opinion that, in point of revenue and profit, they have no reason to complain. He inclines to think, indeed, that we have preserved to them an extraordinary revenue, which, without our interference, they could not long have retained. Unrestricted cultivation of the poppy would in a few years have reduced the rent of the poppy fields; unrestricted exportation would have reduced the value of the drug; and the prosperity of the country, as far as it depended on the stimulus given to trade and agriculture by the opening of the roads from Malwa to the sea-coast, would have suffered a serious reverse. From this the country has been preserved by the measures of the British Government, and the cultivation of the poppy, if less extensive, is more profitable

now to the Princes of the country than it would have been if we had never interfered with it. It is to be recollected also that if the British Government had pursued a different policy, as it might with perfect justice have done, and instead of entering into stipulations with the native states of Malwa for the purchase of the Opium destined for exportation, had contented itself with prohibiting the transport through places subject to its own jurisdiction, and purchasing the right of exclusion in other places, the consequences would have been more injurious than any of which they can now explain. Mr. Maddock is fully sensible, however, that the scrutiny and interference which the present system involves, and the exercise of the right of search and seizure through the medium of the lowest of our servants, are objectionable in principle, and must be offensive and injurious to the independence of the native states. Mr. Maddock did not foresee the necessity of keeping up establishments in the territories of the states subject to the Bhopal agency, to enforce the prohibition against the transit of Opium through them, at the time the Treaties were first made: and if they are necessary, he observes, it must be inferred that, however cordially the rulers of the states may have appeared to acquiesce in our plans, they are not really favourable to them.

The agent denies that our influence was unduly or unfairly exercised to obtain the concurrence of the native states of Eastern Malwa in our Opium Treaties, or that their interests, feelings and wishes were neglected or wantonly sacrificed in the negotiations. He thinks our objects in these Treaties have been so far attained that the cultivation is rather on the decrease than otherwise, and that the obstacles which have been placed in the way of exportation, have made it too difficult and precarious to be attempted to any considerable extent.

The state of Bhopal has manifested an aversion to our Treaties, arising from a peculiar source, not because they were deemed unjust, or because the terms of them were unfavourable, or the mode of enforcing them objectionable, but because their objects were mercantile. Adverting to this feeling on the part of a petty state like Bhopal, the agent takes occasion to remark, that the British Government has, perhaps, lowered its character and compromised its dignity unnecessarily, by entering direct into petty commercial contracts with the Princes of the country, when our object, perhaps, would have been equally secured through the medium of inferior agency.

Mr. Maddock adds, that the questions of justice and good faith apply, he presumes, only to our dealings with those states in whose territories the Opium is produced. If the engagements they have entered into were not extorted from them, but were voluntarily contracted, are liberal on our part, and on the whole advantageous to them, he can see no injustice or bad faith in our proceedings. If Kotah, or any other inland state, wishes to be released from its Opium engagements, the point should of course be conceded; but the British Government would not, in that case, be bound to relax in its endeavours to prevent the transit of Opium through the surrounding and intervening states to the sea coast, and thus those who stand aloof from connection with us in the Opium monopoly, would find themselves deprived of a beneficial market for their produce, and discover that the terms which we have granted are highly favourable to their interests. One of the real objections to our system, that of attempting to limit cultivation by direct interference, Mr. Maddock proposes to remedy by omitting the clause altogether in the Treaty.

Treaty. The other objection, that of our internal interference in enforcing the seizure of contraband Opium, he fears cannot be overcome, unless the system is radically altered, or the native rulers take more interest in its success than they appear to do at present.

Should the Government retire from the Malwa field as the great purchaser and monopolizer of Opium, Mr. Maddock thinks it might still be practicable to preserve the Bengal monopoly by obtaining the power of regulating the duties on Opium, in transit to the coast, and in the districts which produce no Opium through which it has to pass; and in that case we might impose such rates as would be a sufficient check to exports from Malwa, and annihilate the export trade in that direction altogether. He thinks that the duties in these districts might have been and might still be farmed to a British commercial agent; a principle of procedure which would not be at variance with the practice of native Governments, or calculated to give offence. If the general principle of the present system is to be adhered to, Mr. Maddock suggests in conclusion, that two modifications should be adopted; 1st, instead of the price now paid for a limited supply of Opium, *viz.* 30 rupees per punsuree, and 5 rupees bonus, altogether 35; the Government to receive any quantity of Opium of prescribed quality, that may be tendered at the price of 26 rupees per punsuree: 2d, instead of a bonus on the quantity of Opium supplied, and a share of the profits arising from its sale, the Company to pay a fixed sum per annum, equal to whatever is now paid above 26 rupees per punsuree, to the native Prince, in consideration of his strict performance of the duty of preventing exportation. The agent conceives that by these means the poppy cultivation would most likely decrease for want of encouragement, and the sum to be paid to each native Prince would be so considerable, that if his co-operation is to be obtained by making it his interest to co-operate, his exertions might be expected to be greater than heretofore, and all that would be wanting to make the system as little objectionable as possible would at once be attained, if he took an interest in its success, and by his own exertions prevented the necessity of our employing our own agents in his jurisdiction.

No direct answer has as yet been received from the Bombay Government\* to the Circular Letter of the 21st March 1828; but on the 8th July, the Chief Secretary forwarded a Minute by Mr. Warden, on the subject, and stated, that the replies of the residents and political agents under that Presidency, would be forwarded as soon as received. On the 22d August,† the Supreme Government requested to be favoured with a communication of the sentiments of the Governor in Council of Bombay, on the suggestions and propositions contained in Mr. Warden's Minute, and this call was repeated on the 7th of February last.‡

In the mean time instructions have been issued on the date noted in the margin,§ founded on a Despatch received from the acting political agent at Kotah,|| directing that the British Agents abstain from all authoritative interference with, and from all control and scrutiny respecting the cultivation of Malwa Opium.

There is now before Government a Despatch from the resident at Delhi,¶ enclosing one from the superintendent of Mairwarah, describing the attempts which are made to export  
Malwa

\* Bombay Government.

† Ditto, No. 3.

‡ Ditto, No. 26.

† Political Consultations, August 22, 1828. Nos. 1 and 2.

§ Ditto, April 10, 1828. Nos. 27 and 28.

¶ Ditto, June 2.

Malwa Opium across that tract, and the effects of that employment in demoralizing the Nairs, and disorganizing the country.

(Signed) A. STIRLING,  
Deputy Secretary to the Government

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(True Copy.)  
(Signed) G. SWINTON,  
Chief Secretary to Government.

RESOLUTION of the Right Honourable the Governor-General in Council in the Political Department, under date the 19th June 1829.

No. 49.

• THE Governor-General in Council, having taken ~~deliberately~~ into consideration the several Despatches received in reply to the Circular Instructions dated 21st March 1828, and subsequent correspondence, proceeds to record the following observations and resolutions on the subject of our Malwa Opium arrangements.

Although some difference of opinion exists among the authorities employed in Malwa and Rajpootana, regarding the practical effects of the Opium Treaties upon the prosperity of the country at large, and the feelings with which they are viewed by the native Princes; the general tenor of the evidence now before Government, leads irresistibly to the inference that evils of a very serious nature are inflicted by our monopoly system in Central India, on all who fall within the sphere of its operation.

It has been found altogether impracticable to enforce that part of the original scheme, which contemplated a positive reduction of the quantity of the poppy cultivation; and we have already therefore determined to abstain from any direct interference with the production of the article, and have instructed the local authorities accordingly.

Nearly all our agents concur in representing that our measures for controlling the transit and exportation of Malwa Opium, are vexatious and oppressive to the people, unpalatable and offensive to their rulers; whilst we have abundant proof of their imperfect efficacy in the continually increasing prevalence of smuggling, and the yearly augmentation of the export of the drug from Diu and Demaun to the China market. The intervention of Scindia's scattered and extensive possessions, which it has been found impossible to include in the general arrangement, would alone defeat our hopes of preventing the escape of contraband Opium in considerable quantities from Central India. And further, the temptations to smuggling are so powerful, the pursuit of the illicit traffic is so congenial to the tastes and habits of the wild tribes and dissolute adventurers who abound in Malwa, and the public sentiment is necessarily so hostile to our monopoly, that it may reasonably be doubted whether the native states, however well disposed to co-operate, and anxious to fulfil their engagements, are strong enough to carry the system into complete effect, either with or without the constant and minute interference of our local agents. In the mean time, there is reason to fear that the repeated and desperate efforts made to pass the Opium beyond the limits of our restrictions by large armed bands of smugglers, and their open systematic defiance of the local authorities whilst engaged in the enterprize, are operating to demoralize and disorganize the country, and

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to revive the ferocious and turbulent habits of the Meenahs and other uncivilized tribes, in a degree which demands the most serious consideration.

It is difficult to believe that a system of monopoly unavoidably fraught with so many evils, and which, if successful, must destroy the internal trade of the country, by depriving it of the most valuable article of commerce, can really be palatable to the native rulers who have entered into Opium engagements with us, or indeed otherwise than extremely hurtful to their feelings and interests. We have ample and positive evidence, that the treaties are loudly complained of by the states of Boondée and Kotah, two of the most important members of the restrictive confederacy, who have repeatedly solicited to be released from their obligations; and whenever an option has been clearly and unequivocally allowed, as in the case of our negotiations with Jyepore, Kishen Gurh and Scindia's Government, our proposals have been uniformly rejected.

Impressed with this view of the subject, and being quite unable to devise any middle course of procedure which affords the promise of satisfactory results, his Lordship in Council cannot avoid the conclusion, that we are bound by paramount considerations of justice and good faith, to withdraw altogether from interference with the growth and transit of Opium throughout Central India, confining our restrictions upon exportation to our own territories, and to Guzerat, Kattywar and Cutch, where the prohibition should still be maintained by the Bombay Government, as it appears from the communications of the Honourable the Governor in Council, that no injury and discontent are produced by our arrangements, which have been in force for many years in that quarter.

His Lordship in Council resolves accordingly, that in the case of Odeypore, Boondée, and those states of Malwa and Rajpootana, where our Treaties provide merely for the prevention of the transit of Opium, they be relinquished immediately, under that article which leaves us at liberty to discontinue our Malwa Opium arrangements whenever we think proper; and that every where our establishments be withdrawn from the interior, and the native chiefs relieved from these articles of their engagements, which prohibit independent exportation.

It will be for consideration in the General Department, whether the provisions of the existing Treaties relative to furnishing a supply of Malwa Opium, shall be kept up with any, and which of the Malwa states, supposing of course that they are willing to continue to deliver the article to us on the present terms, or any others that may be negotiated, and generally what measures shall be taken under this resolution to provide for the Bombay sales, and extend the cultivation of the poppy in Behar, or elsewhere, within the Honourable Company's Territories.

(Signed) G. SWINTON,  
Chief Secretary to Government.

(No. 2, of 1830.)

No. 12.

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**LETTER in the Separate Department, from the Governor-General in Council in Bengal to the Court of Directors.—(Dated 3 August 1830.)**

**Honourable Sirs:**

In the present Despatch, we propose to lay before your Honourable Court a succinct Statement of the measures we have taken, and propose to take, with respect to the revenue we have heretofore derived from Opium, the produce of Malwa.

2. The Bombay Government will have duly reported the proceedings and resolutions adopted by them towards the commencement of the past year, and will have forwarded the Minutes of Mr. Warden and of the Honourable Governor Sir John Malcolm on the subject, the result of which was a reference to this Government made in the Political Department, urging that measures should be adopted to augment the supply of Malwa Opium provided for the Bombay sales, and for consumption within our own territory, or that of our allies on that side of India.

3. On our proceedings noted in the margin \* will be found an extract from the proceedings in the Political Department, dated 15th May 1829, with a Resolution founded on the representations received from Bombay for augmenting the Opium provision in Malwa.

4. In forwarding this Resolution to the Opium agent, we expressed our concurrence in the views of Sir J. Malcolm, so far as to think it desirable that the quantity provided for Bombay should no longer be limited; but on the contrary, we desired the agent to extend his purchases as far as possible, consistently with the regulations as to price laid down in the instructions of this Government, addressed to the Board of Customs, Salt and Opium, on the 3d September 1824.

5. The demand in China we had noticed to be largely increasing, besides that the supply for local consumption was stated to be insufficient, we directed the agent's attention however to the necessity of vigilantly inquiring whether, under the name of local consumption, the article might not be carried through indirect channels for exportation by sea. In this observation we referred particularly to the large supplies required annually for Ahmedabad, which it will be seen we afterwards noticed more pointedly.

6. The next paper to which we have to draw your attention is the Resolution adopted in the Political Department on the 19th June following, for abandoning the system of restriction on the export and transit of Opium in Malwa, which was the basis of the form on which we then drew revenue from the article, *viz.* that of monopoly, or exclusive purchase for resale to exporters by sea. The grounds of this change of measures were in great measure political, and have been explained at length in that department. The resolution was transferred to the separate department, in which we now write, in order that it might be there determined what measures should be taken to maintain the revenue,

or



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or as much of it as was possible, under the new scheme of relations with the powers of Malwa, that would subsist after we had withdrawn from the engagement contracted for the prevention of the transit and exportation of the drug. The attempt to set restraints on the growth of the poppy had before been given up, under orders from this department, but the Opium agent had been allowed to make his contracts and arrangements for the ensuing season, on the assumption of the old system's continuance in other respects.

7. In this state of things our Secretary laid before us a note pointing out the difficulties of the position into which the concern would be brought by the sudden abandonment of the restrictive system.

8. In a Letter, dated the 6th June, the agent had recently reported the arrangements he had made to obtain a full year's provision, so as to allow a sale of 4,000 chests in Bombay, and meet the wants likewise of internal consumption. The sources of supply were, first, Treaty Opium furnished by states and chiefs at thirty rupees the punsuree, 10,063 Surat maunds;\* secondly, store of the preceding year in hand, about 2,000 Surat maunds; thirdly, by contracts with merchants, the agent had secured a provision of 4,550 Surat maunds, at nominal prices of thirty and twenty rupees, the punsuree, but with the condition annexed of granting passes to Palee for twenty and fifty-five per cent. of the quantity delivered under the contracts. Of the above provision, 14,600 Surat maunds, equal to 4,000 chests of 140 pounds each, were for the Bombay sales, and the remainder to meet the consumption indents, amounting in the aggregate to 2,245 Surat maunds.†

9. We had to determine whether to prosecute measures to obtain the supply for Bombay under the altered state of things, and whether to continue to provide Opium for consumption in Ahmedabad and elsewhere, now that transit, and consequently purchase for the purpose would be free. But the question that most pressed was, what was to be done in respect to the contracts made with the condition of passes, and generally the footing on which the concern was to be carried on under the altered state of things produced by the abandonment of the system of restriction and monopoly.

10. The following is the substance of the instructions we addressed to the Opium agent on this important subject: "With respect, first, to the contracts made with the condition of passes, we observed that there need be no change made in granting them, until the Sahookars ceased to require them, or complained that they were not productive of the advantage expected. In either of these cases it would, we conceived, be necessary to tender some equivalent compensation, if required, or any rate to allow the merchants

the

* Surat Maunds	...	...	...	...	...	10,063
—	...	...	...	...	...	2,000
—	...	...	...	...	...	4,550

Surat Maunds 16,613

† Ahmedabad	...	...	...	...	1,847	0	0
Boondee	...	...	...	...	300	0	0
Nemoun	...	...	...	...	40	0	0
Dehlee	...	...	...	...	32	0	0
Doongurpoor	...	...	...	...	96	10	10

Surat Maunds 2,245 10 10

the option of being absolved from their contracts. Future purchases must, of course, be made without this embarrassing condition."

11. The former restrictions in respect to transit and export of the article having been taken off, we desired the agent not to consider himself any longer under obligation to furnish Opium for consumption to any state not within the limits still affected by restrictive arrangements. Boondsee, Nemaum and Doongurpoor were in this predicament. Whether Ahmedabad was also expected, must depend on the nature of the arrangements that might be made at Bombay for preventing the exit of Opium by sea, that is, on the line which it might be resolved to guard for this purpose. If Ahmedabad should fall within that line, so as not to be accessible to traffickers in the article, it would of course be necessary to provide, on requisition, a sufficiency of Opium for the internal consumption of the protected limit, but it was to be hoped that at any rate the quantity heretofore indented for on account of the consumption of Ahmedabad would admit of decrease.

12. The agent was instructed to correspond with the Government of Bombay on this as on all other questions connected with the provision and dispatch of the Opium of Malwa; and we requested the Honourable the Governor in Council to make known to the agent his sentiments and intentions as to the future, consequent upon the resolution taken by the Governor-General in Council in the Political Department on the 19th June.

13. A question has been put in the Agent's Letter, dated the 30th June, regarding the expediency of granting passes for private Opium to be conveyed to Bombay, in lieu of compelling the merchants to take the western route for its exportation by Demau. On this point we observed, that under the change of system resolved on, some plan of the description indicated in this suggestion would eventually, we did not doubt, be found expedient. But no regulation for imposing a *transit duty* to be paid for the advantage of the route could legally be enacted, we then conceived, without the delay of preparing and submitting the draft for approval in England. There were, however, other forms, in which we suggested that the Government might obtain an equivalent for the advantage of opening this route for the export of Opium the produce of Malwa, and under the resolution taken in respect to the local restrictions, we thought it highly expedient that recourse should be had to some plan calculated to secure to the merchants and capitalists of Bombay as much of the commerce as possible.

14. Two plans presented themselves to us, and we called for an early communication of the agent's sentiments as to the expediency of adopting one or both, as well as generally as to the course most proper to be followed for securing the revenue now realized, from much loss under the change of measures resolved upon.

15. The schemes which suggested themselves at that time were the following:

First.—That the Malwa agent should, at the proper season, sell by public auction passes to Bombay, with assurance of free export for a certain quantity of Malwa Opium. The proceeds to be carried to the credit of the concern, and fair intimation to be given to bidders at the Bombay sales of the number of passes so granted, and the quantity of Opium covered by them.

Secondly.—That the agent should open to the Suhookars of Malwa the privilege of having their Opium sold along with that provided by the agent at the Government sales of Bombay, on the condition that a certain portion of the purchase-money,

such

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- a. such as might be considered a fair equivalent for the advantage of the route, compared with the dangerous and circuitous one of the Desert, to Demaun, should be retained by Government.

16. We noticed that both these schemes presupposed the ability of the Bombay Government to oppose effectual barriers to the transit of Opium through their territory to the sea coast. The price yielded hitherto by the article at Bombay, compared with that of the Malwa purchases, showed the disadvantages arising from the existing restrictions to exceed considerably the cost price, that is, to be worth to the merchants more than half the Bombay value of the article, could they so purchase relief from them. Under the new system, the exemption would not, of course, be worth quite so much, but the passes would be thought still to have a very considerable value, and the plan of exposing them to the competition of bidders at a public sale promised to secure a nearer approximation than any other to the true equivalent advantage of the route, which was the only legitimate source of taxation and profit.

17. We directed the agent, in stating his sentiments on these projects, to include the consideration how far it would be necessary or proper to continue the annual provision of Malwa Opium by purchase on account of Government; and whether it would be advantageous to confine this to the Opium obtained under treaties, so as to avoid the collision that must ensue were the agent to be selling passes with one hand, while he was purchasing Opium with the other.

18. Major Stewart, the officiating Opium agent and resident at Indore, replied on the 26th of September to the above instructions. He stated that he had found it necessary to compound with the Sahoo-kars for the passes agreed to be given them for quantities proportionate to their deliveries, by an advance of the contract price; and it had been settled that they should receive forty-five rupees instead of thirty rupees, or twenty rupees per punsurree, for what they might deliver. On these terms the entire supply from this source had been secured.

19. He informed us that, of the Treaty Opium, there would be a deficiency of 1,500 Surat maunds from the Holkar state, and fifty from Dhar, but the rest would be secured. Consequently, if relieved from the necessity of supplying the Ahmedabad and other demands for local consumption, which might be supplied at the price of the day by other means, there would be no disappointment in the provision for the Bombay sales, notwithstanding the change of policy determined upon. Major Stewart, however, in this and a subsequent letter, dated 5th October, reported, that although deliveries of Opium under the treaties would be made in the passing year, none could be reckoned upon in future; for all the states, except two inconsiderable ones, had given notice of their wish to cancel the engagements they had entered into in regard to Opium altogether after the close of the season.

20. Having this report of Major Stewart before us, we proceeded to determine on the course to be adopted for the management of the concern in the season; and we felt indebted to Major Stewart for much useful information and intelligent reasoning to assist our deliberations on the subject. Assuming that we should agree at once to release the states and chiefs from all existing engagements, Major Stewart had stated that there were three forms in which the concern might be prosecuted; and he discussed each with much

much judgment, giving the result of his inquiries and information on the various points bearing on them respectively. The plans submitted by him were the following:

1st. To negotiate new treaties for securing produce.

2d. To abandon the field as purchasers, and raise a revenue by granting passports to Bombay; and,

3d. To enter the market as purchasers of the drug.

21. To this last Major Stewart gave the preference, accompanying his arguments on the subject with estimates of the profit he reckoned to secure our purchases made at various prices, from forty-seven rupees the ponsuree to sixty rupees, and upon the assumption of a fall of price at Bombay not exceeding one-fifth, or 1,320 rupees the chest.

22. Our determination on this reference was conveyed in instructions to the following effect.

23. Approving highly of the measures that had been adopted for commuting the pass arrangement to an advance of price, we authorised the relinquishment of all existing engagements with native chiefs and powers at the close of the season; and on the three schemes proposed for the future, remarked as follows:

1st. The plan of opening fresh negotiations with a view to new arrangements with the states of Malwa, on the principle of procuring Opium through the chiefs, and associating them with the measures of Government by participation in the profits obtained from the source, appeared to us open to most of the objections which had led to the abandonment of the restrictive system; we therefore dismissed it as inexpedient.

2d. The second plan, viz. that of selling passes to Bombay by the direct route, had the advantage of obtaining for that mart the whole sea export of the article, which had hitherto been participated by the less favourable ports of Diu and Demam. The plan, too, had simplicity, promptness of realization, and other manifest practical benefits to recommend it, while it would save considerable expense in establishments, and relieve Government from the inconvenient and objectionable position in which it was placed by the necessity of raising its revenue through a commercial monopoly. We were therefore inclined strongly in favour of this scheme. Relying, however, on the agent's opinion, that Mahaguns and Sahookars would not for some time appreciate properly the value of the passes, and the importance of the privileges they would convey, we yielded to the force of the considerations which induced him at present to give a preference on the whole to the third of the plans stated, viz. that of continuing to make through the agent purchases of Malwa Opium for transmission to Bombay for sale. Major Stewart reckoned that the price to purchase would range from forty-seven rupees the ponsuree to sixty rupees, and that 4,000 or even 6,000 chests might be procurable in the year on these terms for the supply of the sales; also, that unless the fall of price exceeded one-fifth, there would still be a revenue, assumed at the lowest at 17 lacs upon the smaller quantity mentioned. The effect of the rise of price in Malwa upon production was not taken by the agent into account, nor the consequence of the efforts still making on this side to increase the Opium provi-

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sion of Behar and Benares. We informed the agent that the number of chests of Opium to be brought to sale at Calcutta in the approaching season was no less than 8,778 chests, exceeding by more than 1,000 chests the large provision of the preceding year, and thence we saw reason to apprehend that a fall of price to the extent of one-fifth only was rather too favourable an estimate.

3d. With respect to the point adverted to in the 20th paragraph of Major Stewart's Report, *viz.* whether, continuing to purchase for sale for the public account, the Government should at the same time sanction the grant of a limited number of passes, for a consideration, direct to Bombay, for the purpose of securing that all the Opium of Malwa intended for China should be exported by that route, we stated that we had given to this subject the most attentive consideration, and the conclusion we had come to was, that it would be hazardous to the profit expected to be realized at the Government sales, and must interfere greatly with the agent's power of making local purchases, if this route were to be opened to private speculators simultaneously with the prosecution of the attempt to raise a revenue by purchasing and selling on account of Government.

24. Major Stewart, under our orders to consult the Bombay Government in his arrangements regarding the provision of Opium in Malwa, forwarded very properly to that Government copy of the Reports addressed to us, upon which we came to the determination above explained.

25. The Honourable the Governor in Council, having Major Stewart's Report before him, addressed to us on the 5th November last, a Report of his views as to the best way of carrying on the Malwa Opium concern, now that the restrictive system and the political arrangements for its enforcement were to be abandoned. The Governor in Council recommended the establishment of a commercial agency in Malwa, separate from the political office, for the purchase of the article in open market. The Governor in Council looked upon the advantage possessed by Government, in the direct route, as calculated to secure a profit on purchases, though made in the face of the freest and most active competition; for he doubted not his power to prevent transit of the drug to the coast, except by very circuitous routes. Some valuable information is added in respect to the charges of shipment at Demau, which are stated at fifty-five rupees, merely for the protection of the Portuguese flag, and regarding the advantage that would follow any plan calculated to draw the whole of this commerce to Bombay.

26. The point, however, most urged by the Governor in Council in this Despatch is, that the separate commercial agent should be an officer appointed by, and responsible to, the Bombay Government, who should act independently under its instructions, but in concert with the political resident. Adverting at the same time to Major Stewart's letters above referred to, the Governor in Council recommended the issue of passes conjointly with the purchases; and, to meet the wants of the Bombay market, he further requested that 2,000 chests of the Opium provided on this side of India, *viz.* in Behar and Benares, should be sent round to be sold at Bombay.

27. Before we had replied to this letter from the Bombay Government, we received a second, giving cover to instructions the Governor in Council thought himself warranted, by our reference to his judgment, in issuing to Major Stewart, strongly enjoining him to  
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grant passes immediately for as much as possible of the Opium about to be conveyed by indirect routes to Demann, so as to ensure its conveyance to and shipment at Bombay, along with the provision made for the Government sales there. It was suggested to Major Stewart that he should fix 250 rupees as the consideration to be asked for the passports; and it was added, that the owners of the Opium should be "not subject to the customs payable to the states through the territories of which it would have to pass."

28. We felt ourselves placed in very embarrassing circumstances by this interference of the Bombay Government, and lost no time in communicating our sentiments to that Government and to the Opium agent.

29. With respect to the appointment of a Bombay civil servant as commercial agent for the purchase of Opium in Malwa, we observed, that we did not conceive Major Stewart to have recommended any separation of the agency from the political functions with which the concern was united; on the contrary, we thought there was advantage in the union, and that a separation would be of prejudicial influence, particularly so if the purchase and arrangements for the provision and dispatch of the drug were placed under a Bombay officer, while the political duties remained as at present.

30. We doubted the necessity or expediency of any transfer of the agency on commercial grounds, and did not look on the locality of the sales as a ground for the measure, more especially under the present uncertainty as to the footing on which it was to be carried on.

31. With respect again to the project of granting passes for transport of the Demann Opium to Bombay, so as to secure the article for the latter mart, and obtain a revenue for the advantage opened to the merchant, we admitted fully that the measure would produce both benefits, but referred the Bombay Government to our Despatch to Major Stewart, and stated our adherence to the opinion before expressed, that this plan was incompatible with that of purchasing for re-sale. We pointed out that the necessary effect must be to limit the profit on the re-sales to what might be fixed as the consideration for the passes; that it would create a local competition in Bombay, interfering with the sales, and must embarrass the purchases in Malwa, by giving every holder the option of taking the chance of the Bombay sales, if he thought the difference of price or profit likely to exceed the price of a pass. We remarked also, that if the passes were so drawn as not to give free passage to the article in the hands of private merchants, that is, if they were left subject to arbitrary impositions and delays in crossing the territory of every petty chief, the instruments would be unsaleable except at very low rates; besides which the credit of the passes would be shaken, and the habit of disregarding the Government passports would affect imperiously all future arrangements.

32. For these reasons we expressed the determination not to interfere at present with the plan we had, at Major Stewart's suggestion, adopted for the season.

33. In the mean time the Despatch addressed by the Bombay Government to Major Stewart, on the 10th November, induced that officer, though very reluctantly, upon its arrival, to assent to the scheme of issuing passes contemporaneously with the provision of Opium by purchase for re-sale in Bombay. The officiating agent accordingly issued notices inviting tenders for passes, but five days afterwards receiving our Secretary's

tary's Letter, dated the 27th October, before referred to, wherein the incompatibility of the two schemes was strongly pointed out, he recalled his notices by expresses sent in every direction, and immediately gave notice to the Bombay Government that he had done so. Major Stewart wished, however, that the privilege of granting passes to a limited extent was still left in the agent's hands, in order to facilitate his purchases through the influence they would enable him to command; such an influence, added to the advantage of early appearing in the market with ready money, being looked upon by him as the only circumstances he could rely upon for favourable purchases.

34. We expressed ourselves as highly approving the promptitude of the officiating agent's determination to withdraw his notices regarding the issue of passes, thinking that had any been issued, they would have involved all the operations of the department here and at Bombay in great embarrassment, and must have produced perplexing claims of various kinds.

35. With respect to the view taken by Major Stewart, in regard to the advantage of reserving the power of granting passes as a means of influence, we stated that our opinion remained unchanged as to the inexpediency of mixing the two plans, so long as the scheme of purchasing was followed, and we had determined to give it a trial; we thought both that operation and the re-sales should be simplified as much as possible, so as to avoid mixing up with a monopoly speculation of our own the project of obtaining profit, in the form of a pass, upon the speculations of others.

36. We now have to notice three further Letters from the Bombay Government, dated respectively the 30th November and 5th and 11th December last, the first written on learning that Major Stewart had been induced to issue passports in conformity with the urgent suggestion of the Bombay Government, and stating the measures taken to invite the merchants of Bombay to apply for them to bring their Opium to that mart instead of exporting it by the indirect routes, and under the Portuguese flag, from Demau; and the two latter reporting the steps which had been taken on learning that the intention to issue passes had been relinquished, in consequence of the orders received from us by Major Stewart.

37. In replying to these Letters, we referred the Bombay Government to the opinions we had frequently before expressed, against uniting with the purchases making for re-sale any scheme allowing the capitalists of Bombay and Malwa to compete with Government as purchasers in the first instance, and again as sellers at Bombay, which we noticed must be the effect of allowing passes to be issued simultaneously with the Government sales at the latter place.

38. We added some observations on the following points, which seemed to require notice, in the correspondence and despatches of the Bombay Government; viz.

First, Whether it was advisable to issue passes for the excess quantity of Malwa Opium, now ready for export to Demau, as a present measure adapted to the particular occasion, independently of the general adoption of the scheme of granting passes and purchasing for re-sale simultaneously?

Secondly, Had the issue of notice by the agent in Malwa, offering passes, continued, with the measures taken at Bombay to spread the information that they would



would be granted, created claims or occasioned losses entitling the sufferers to compensation from Government ?

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Thirdly, The speculators in Malwa Opium had been informed by the Governor in Council, that the Supreme Government would be urged to permit the Opium of the present season to proceed, under passes, direct to Bombay. Whether had any new claim been created thereby, or had the claims under the notice above referred to been strengthened by this further measure of the Bombay Government ?

39. With respect to the first question stated above, it appeared to us that if the granting passes for a consideration, simultaneously with a continuance of purchases, were objectionable on general grounds, it could not be advisable to adopt the measure for the sake of the temporary profit it seemed to offer ; for to grant passes for the surplus Opium now in Malwa would bring the whole to Bombay, to be offered to the buyers of that sold by the Government ; and as it would have the same precise advantages for shipment, it was impossible to suppose that it would not, more or less, affect the selling prices. We admitted it to be quite true, as observed in the Bombay Letter, that the price in China, and the calculation of the speculators upon the total supply of the season, including that at Demaun and elsewhere, as adequate or not to the demand there, must regulate the biddings at the public sales ; but although the quantity at Demaun entered of course always into the calculation, it did not thence follow that this quantity must affect the calculation equally of the Opium at one port as at the other.

40. But a more serious objection to granting passes was the effect the measure would have on the purchases of next year, supposing the plan of purchasing to be then continued ; of course no one could be expected to sell to the agent at a price offering a profit exceeding 250 rupees, if he had the expectation of conveying the drug himself to the Bombay market, with the advantage of a Government pass for that consideration ; and the fact of passes being granted in the present year, would be sufficient to inspire the hope universally, howsoever the contrary might be declared by the agent.

41. Thus the objection to granting passes was, that it was a half measure, calculated to obstruct the plan of purchase and resale, determined at the specific recommendation of the agent to be carried on for the present season, and incompatible with its continuance. We were far from deciding that the plan of granting passes as a general measure might not be preferable to that adopted. Our own impressions were greatly in its favour, and it was our intention, we stated, to direct the agent's attention to the consideration of the question, whether it would not be desirable to adopt that scheme in the ensuing season, in relinquishment of all purchases. In that case, the passes might, we observed, be offered to sale (limited in number) in the same manner as the chests were, and the competition would show their real value ; or they might be unlimited and issued at a value fixed by us. Upon the adoption, however, of any such change of system, we had not then determined, and until we had done so, we could not sanction the partial abandonment of the existing system proposed by the Governor in Council. The result of the communication opened with Major Stewart, for determining as to the best course to be pursued in future, would be made known to the Honourable the Governor in Council, as soon as any decision on the subject should be formed. In the



mean time, we desired that things might be left in the train indicated in the orders and instructions of this Government.

42. With respect to the second of the points stated above, *viz.* The claims arising out of the publication of the notice regarding passes in Malwa and Bombay, it appeared that Major Stewart was induced to publish the notice in question, on the 23d November last, but on the 28th following, he received our orders of the 27th October, and immediately sent expresses every where to recall the notices. In like manner the Letters of the Bombay Government to the Bombay merchants, informing them of the grant of passes, were dated 30th November, and on the 5th December the remedy was applied. In both cases the period for which the notice circulated was five days only; and any claims that speculators could prefer in consequence must be founded on what occurred in this short space of time.

43. In our opinion it would not be enough to allege that hopes were held out by the notice, which its recall disappointed; nor that speculations were founded thereon which were subsequently abandoned. There must have been positive loss incurred through the measures of Government or of its officers, before there could be any ground or pretence for recompense. Although therefore the recall of the notices might have produced inconvenience, and was in appearance awkward and unfortunate, we were not disposed to listen to any claims preferred in consequence, except proof should be adduced at the same time that real loss was sustained thereby. We moreover requested of the Bombay Government that no claim of the kind might be decided upon affirmatively, without a previous reference to our Government, accompanied by a full statement of the circumstances.

44. With respect to the third question, *viz.* the effect of holding out hopes to the merchants, that through the instance of the Honourable the Governor in Council of Bombay, this Government might be induced to sanction the grant of passes in the manner proposed for the Malwa Opium of the present year, we observed as follows: having determined against issuing the passes in question, we could only express our regret that we had been unable to realize the hopes held out to the merchants by the Governor in Council. At the same time we could not recognize any claim as arising out of this additional disappointment; for of course the merchants would have known that the result was entirely dependent on the view that might be taken by us; and however reluctant this Government must always be to take any course affecting the impression entertained as to the influence and weight of the other Presidencies, we could not yield our judgment on a matter of this description, or allow the desire to maintain their credit and estimation to weigh against the views of policy by which we felt it our duty to be guided.

45. With reference to the observations in the Letter of the Bombay Government, dated 5th December last, regarding the confusion incident to the existing double control, we observed, that considering the source of the inconvenience which had been experienced in the present instance from the clashing views of the two Governments, that inconvenience could scarcely be urged as an argument in favour of a transfer of the concern to Bombay, for the difficulty would not have been felt if the agent had received his instructions solely from Bengal, which, notwithstanding the deference enjoined to the sentiments of the Honourable the Governor in Council at Bombay, in the passage cited from the

Letter

Letter of this Government, dated 28th July last, it was always intended that he should do on all questions involving the principles on which the concern was to be conducted.

46. Our opinion was rather confirmed by the result of the present correspondence against the expediency of any transfer of the control of the Malwa agency to Bombay; for notwithstanding the benefit that would thus be secured from the exclusion of any double control, the consistency of principle requisite for the security of the revenue realized on this side of India would be wholly lost.

47. Having thus disposed of the questions which arose as to the management of the Malwa Opium revenue, in the past season, it may be necessary to refer your Honourable Court to the proceedings noted in the margin;\* showing the extent of the supply provided for the sales of the year at Bombay, and for local consumption in the Bombay territory, and the causes of its falling somewhat short of the quantity promised by Major Stewart in November 1829. It will be seen, that instead of 4,000 chests for sale, and 400 maunds for consumption, only 3,600 chests on the former account, with the full supply required for the latter, were actually dispatched to Bombay. We also beg to refer you to some correspondence that passed between the officiating agent and the Bombay Government, in respect to the most advantageous route by which the article should be forwarded, and the contracts for carts for its conveyance, also the objections made at Bombay to the route proposed by the officiating agent.

48. The out-turn of the sales made of 3,502 chests of Opium of the year, exhibiting a net amount realized of 56,18,527, exclusive of 2,35,952 rupees charges (the sale proceeds being 58,54,480), will be found on the proceedings noted in the margin;† and with a view to include all that has passed in relation to this subject, the further references annexed contain the correspondence and orders passed regarding adjustments of the net profit per chest, payable to the states under treaties; we have added in the collection which accompanies this letter, a letter very recently received from Bombay, forwarding a statement from the principal collector of Ahmedabad, of the manner in which the Opium supplied to him had been disposed of, also our reply and observations thereupon. In the same collection also will be found an extract from the Political Department, with some correspondence, showing the causes of the failure of the Kota state, to make good their quotas of the drug in the season. We now proceed to later proceedings, copy of which also accompany, being included in the collection referred to. The time having arrived when it became necessary to consider the measures to be adopted in the ensuing season, the question was brought under our notice, in a Minute by Sir Charles Metcalfe, recorded and numbered in the collection as per margin.‡ By desire of the Governor-general the Civil Finance Committee had given their attention to the subject, and copy of a Report of their sentiments is also annexed.§

49. From Malwa we had received no further information, in reply to the requisition to that effect addressed to the late officiating agent Major Stewart, on the 12th of January last, which was occasioned by this officer's having left the office under charge of his

\* Consultations, Dec. 15. Nos. 33 and 34.

† Ditto, Nov. 21, 1828, Nos. 20 to 33; Jan. 6, 1829, Nos. 9 to 14; Feb. 20, Nos. 24 and 25; May 12, Nos. 6 to 8; Aug. 18, Nos. 21 to 24; Dec. 15, Nos. 15 to 23. ‡ July 27, 1830. § Ditto, July 13, 1830.

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his deputy, Mr. Cartwright. From the Bombay Government, the only further despatch received on the subject of the conduct of this branch of revenue, is the letter cited in the margin,\* whereof copy forms also number in the packet.

50. The matter having been taken up with reference to all that had occurred in the past year, and with particular advertence to the view stated by the Finance Committee, we have come to the determination to relinquish entirely the plan of purchasing for resale, and to confine the Government dealings to the grant of passes for free conveyance to Bombay for exportation. Our views on the subject are incorporated in the annexed resolution.

51. It had appeared, that notwithstanding that the officiating resident and Opium agent in Malwa, was informed as early as in May 1829, that it was the wish of the Bombay Government to increase the supply of Opium for sale as much as possible, and instructions to this effect had been issued by the Supreme Government; the officers of the department were barely able to provide for the Bombay sales as much as 3,600 chests, and of this quantity a large proportion (*viz.* about Surat maunds 2,000) consisted of store remaining over from the preceding year. As the season had been favourable, and the growth abundant, the failure was to be ascribed exclusively to the resolution adopted by the Supreme Government on the 19th June of the past year, to withdraw from all measures of restriction upon the growth, transit or export of the drug on private account. The operation of this course of policy upon the year's supply had been felt in various ways, particularly the following :

First. Major Stewart had contracted for the purchase of considerable quantities of Opium, at the usual price of thirty rupees the punsuree, with the condition attached, that passes for conveyance of quantities proportionate to the deliveries should be granted to the contracting merchants.

52. Upon the removal of the restrictions, passes were no longer required to protect the article; and Major Stewart was obliged therefore to compound for the privilege, by an addition of fifteen rupees per punsuree to the contract rate. The effect, however, of removing the restrictions, produced a rise of price in Malwa, considerably exceeding forty-five rupees, so that the officiating agent not only had been unable to extend his purchases as desired by the Bombay Government, but with difficulty had obtained the fulfilment of the contracts.

Second. Although only the restrictive provisions of the Opium treaties were revoked and cancelled in the past season, and the states remained under engagements to deliver their quotas of Opium at thirty rupees the punsuree, receiving the bonus and the profit on chests sold according to their deliveries, still the effect of the rise of price consequent upon the removal of restraints on the traffic and export, had been to produce short deliveries by almost every state. The native Princes or their ministers seemed to have calculated that the present gain by sale on the spot at fifty-five and sixty rupees the punsuree, afforded a larger profit than the bonus and the average net profit on their allotted number of chests were likely together to yield. This therefore was another cause of short provision for the

Bombay

Bombay sales of the past year. The resource from treaty Opium, it is to be observed, will be wholly cut off in future, as all the states have given notice of their wish to withdraw entirely from their Opium engagements after the season which has now closed, and the Government has assented to their doing so.

53. The facts above referred to seemed fully to account for the limited provision made for the Bombay sales of the season. The number of chests forwarded from Malwa was, as above stated, only 3,600, whereas the information received regarding the quantity that found exit through Demaun and other places, stated the quantity at 10,000 chests, and the lowest estimate gives 9,000 chests.

54. But if a sale of 3,600 chests had been provided at Bombay in the past season, it was to be recollected that much of the article was obtained before the removal of the restrictions was known, that the agent had the benefit of contracts made before that measure was adopted, and of treaties which were not to expire until the close of the year; no such advantages would be possessed in the present season. If it were to be determined, therefore, to prosecute the scheme of buying for resale, the agent had nothing whatsoever to rely upon but the competition price and his ready money. He must enter the market as a common purchaser, and his appearance in that capacity would of itself tend further to enhance prices. The political influence and other inducements and means, through the judicious use of which the agent's bargains had heretofore been favourable, would be withdrawn with the annihilation of the treaties, and his attempt to buy would end most probably in an increased outlay, and much smaller provision than in the past season, not to mention the effect which the competition must have in augmenting the growth and manufacture of the drug at the places of production. To complete the risks of failure under such a scheme, the purchases would have to be made in the face of a falling market in China, and with the certainty therefore of a less return at Bombay.

55. The exclusive possession of the best route for transmission to the coast, and of the best port for shipment, would doubtless, we conceive, enable the Government to realize some profit by purchases made even under these disadvantages; but the question was, whether that was the best method of turning our position in these respects to account, so long as the services of the states and authorities in Malwa were commanded in aid of a monopoly purchase, and while restrictions and prohibitions were enforced which made it ruinous for individual merchants to compete with Government, the system of purchases was successful, and on many accounts perhaps the best; but with traffic and transit free in Malwa, the attempt to draw the article to Bombay by buying it up, appeared to be opposed to every received principle of policy, and likely to entail heavy costs and charges in the management. We were therefore unwilling to determine in favour of the plan of continuing to purchase Opium in Malwa for resale, while there was any other scheme presented for our election, affording a promise of obtaining by other means an equivalent for the advantage of the routes and port of Bombay, which are the real sources of revenue and profit.

56. The information furnished by Major Stewart in his letters of September and October last, and the calculations also of the Finance Committee, appeared to us to afford grounds for estimating the value of the routes which Government had the power of opening at not less than 175 or 200 rupees. At the former rate it appeared that passes could

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could be sold readily ; and at the latter, Major Stewart in the course of the five days when he was inviting tenders at 250 rupees, received a few offers upon speculation. It was to be remarked, however, that the Bombay Government, acting on their information, had estimated the value of passes at 250 rupees ; and as it was not unlikely that the Malwa speculators who made the offer to Major Stewart, did not take into account the gain of time for shipment, and the Demaun charges which would be saved by the pass, there was ground for giving faith to the estimates on which the Bombay Government relied.

57. But, however that might be (for the determining a value for the passes was a point that must necessarily be left to the Bombay authorities), it was made manifest by the Report of the Finance Committee that, purchasing under the disadvantage of open competition and free transit by the indirect routes at 55 rupees the punsuree, and there was a chance of the price exceeding 60 rupees, the Government could not hope hereafter for a selling price at Bombay that would yield a profit exceeding 200 rupees per chest. This, too, would be realized on the limited quantity that could be purchased at reasonable prices in the face of an open competition. If, on the other hand, the real value of the direct route to Bombay should, as supposed, exceed that sum, the whole produce of Malwa might be expected to flow through it, under the plan of issuing passes to private merchants to the benefit of the commerce of Bombay, no less than of the revenue of Government.

58. The capital annually embarked hitherto in the purchase and preparation of the drug would further be saved to Government by the change of plan, and the balances of the treasuries from which the funds had heretofore been supplied would bear proportionate reduction.

59. Thus every motive of sound policy seemed to suggest that the scheme of issuing passes for a consideration equal to the real value of the route to be opened should be substituted for that of purchasing Opium in Malwa, to be forwarded and re-sold at Bombay.

60. The Government will doubtless lose by this plan that portion of the profit heretofore realized by its sales, which was the result of speculation upon China fluctuations of price, but that was less a consideration at present than it had been heretofore, because of the certainty of the increased production causing a gradual diminution of the selling price in the ulterior markets. It had occurred at one time to us, as will have been seen in a previous part of this Despatch, that a participation in that profit also might have been secured (besides the net equivalent for the value of the routes opened), by limiting the number of passes issued, and selling them by auction ; but on reconsideration we determined to abandon that scheme, and to confine the Government receipt to what might fairly be demanded as the equivalent for the advantage of transit and shipment offered to dealers by the new routes. As these benefits were fixed and capable of distinct valuation, the rate of duty taken for the passes conferring them ought evidently to be so too.

61. A further very important recommendation to the plan of issuing passes is, that it will enable the Government to dispense altogether, after a short time, with the establishments entertained in Malwa and at Bombay for conducting the concern in the manner

manner hitherto followed. For the machinery by which a revenue may be realized through the grant of passes is most simple ; indeed, as the stations of Chokies are already maintained, and there are Custom Houses throughout the Bombay territory through which the Opium will be regularly passed to that Presidency, and through which therefore the entire revenue may be collected, it would not seem that the addition of a single functionary to the existing establishments of that Presidency will be at all required in substitution for the agency and Godown officers to be discontinued under the abandonment of the scheme of purchase store and sale heretofore followed.

62. Influenced by the considerations above adverted to, we have resolved as follows :

First. That in lieu of the existing system for deriving a revenue on Opium, the produce of Malwa and other parts in Central India, the Bombay Government shall give notice that passes for the free transit of the article to Bombay for exportation by sea, will be granted on application to the Collector of Customs at Bombay, or to the resident and Opium agent at Indore, on payment at the rate per chest of 140lbs. weight of rupees 200, or such other sum as the Bombay Government may fix as the fair and proper equivalent for the routes opened by the passes.

Second. That the Opium agent in Malwa shall discontinue making any purchases of Opium, and shall use his best endeavours to give effect to the scheme proposed to be substituted, concerting with the Bombay Government as to the form of pass to be issued, the period for which it is to run, and the manner in which it is to be returnable after the arrival of the Opium covered by it at Bombay.

Third. That the agent be further directed to promulgate the determination of the Government to grant passes in the manner indicated, and to explain to the merchants the facilities that will be afforded by the routes opened, as well as those of the port of Bombay, furnishing every information on the subject in his power to all that may apply for passes.

Fourth. That notice of the above change of plan be communicated to the Board of Customs, Salt and Opium, with a view to its being made known to the merchants and purchasers at the Calcutta sales.

Fifth. That the agent at Indore be directed to report weekly to the Supreme Government the price of Opium at the principal marts in Malwa, and to furnish similar information of all passes taken out from his office ; and that the Bombay Government be likewise requested to order weekly reports to be sent to this Presidency, of the passes that may be taken out at Bombay, in order to enable us to judge how the new plan works.

Sixth. That so soon as the plan shall be so far introduced as to enable the agent to determine upon its success (and we cannot anticipate a failure, if the value of passes be properly fixed), he shall discharge superfluous establishments, and the Bombay Government will at the same time revise the establishment maintained for the custody and store of the Opium sent there for sale.

Seventh. That the revenue derived through the issue of Opium passes be brought to account at Bombay, separately from the other items of Custom Duties, but that it be regarded as an asset of the Bombay Government ; the proceeds of the sales,

**Opium.**

sales made in the present year, as well as of any other Opium that may be in store, or that may be transmitted by the agent in Malwa for sale, will of course be carried to account as at present, in order to wind up the concern on account of this Presidency.

63. In forwarding these Resolutions to Bombay, we deemed it necessary to notice the disappointment the Honourable the Governor in Council had expressed that his views had not been more followed; and in particular, the reference made by him to the scantiness of the supply obtained at Bombay for the year's sales, as well as for local consumption.

64. After recapitulating the circumstances which had led to the smallness of the supply of the year, and explaining that they were ascribable to the changes of plan which had been determined upon, we pointed out that although having resolved to give the system of purchase and sale trial for the year, we had opposed every proposition for mixing up with that plan the project of granting passes; we had always intended at the close of the season to take up the question as a general one, and to determine on the mode of carrying on the concern hereafter, according as our information and the result of the experiment might show to be most advantageous in all respects.

65. We transmitted to Bombay copy of the Resolution, the substance of which is given above; and desired that Government to give immediate effect to it by determining a price for the passes, and arranging the details of the mode of transport, and the checks to be established with the Opium agent.

66. We remarked, that the passes being issued on the application of holders, would act as conditional exemptions from the existing prohibitory duty; consequently the equivalent taken from them could not be regarded as a new duty, so as to require a Regulation sanctioned by your Honourable Court and by the Board of Commissioners before its enforcement, as we had at one time thought might be necessary; and we further noticed, that the Opium passed under these instruments to Bombay would stand in the place of that heretofore carried by Government as belonging to itself, consequently the passes must confer the same privileges of free transit, and the Bombay Government must provide that there should be no obstructions or detentions by its officers beyond what was indispensable to prevent the article from being carried irregularly.

67. We desired the Governor in Council, in regulating the amount of equivalent to be demanded for the passes, to adopt the principle of assuming something less than the net difference of expense incurred on a shipment of Opium brought to Demaun, by the most favourable of the indirect routes, as compared with the cost of transit to Bombay, and shipment by the most favourable of the direct routes opened by the passes. The information we possessed inclined us to believe 175 rupees to be the minimum duty that might be taken per chest on this principle, and 250 rupees the rate proposed heretofore by the Honourable the Governor in Council, to be the highest that would be safe to require; but, as before stated, we wished to leave this entirely to the Governor in Council, to be regulated as his enquiries might lead him to determine. Should there be good grounds, we added, for believing that passes would not generally be sought at the low rate of 175 rupees, we intended still to retain the power of purchasing for resale, and we thought it might in such case be advisable to revert to that course, provided the article could be procured in Malwa at a price not exceeding 55 rupees the punsuree. To this effect

instructions

instructions were issued to the agent, and it has been this necessity of waiting to see the result of the new measures ordered, that has prevented the immediate revision of the establishment of the agency. The authorities at Bombay, and the agent, were instructed to guard against any combinations from parties interested in the continuance of the old system, to prevent the advantages of the new from being generally known and appreciated by the merchants, or to keep back applications for passes, after promulgation of the intention to issue them.

68. Full information of the new plan upon which it was proposed to conduct the concern in Malwa, will be communicated through the Board of Customs, Salt and Opium, to all persons concerned in the Opium trade to China at this Presidency; and we informed the Bombay Government, that it was our intention to continue to encourage the extension of production of the article on this side of India.

\* 69. We have now completed the review of our proceedings in connection with this important subject; we submit them in full confidence that the course we have determined to adopt is the best, under all circumstances, that could be followed; and trust to receive the early expression of your sentiments thereon.

We have the honour to be, &c. &c.

(Signed)

W. BENTINCK.

W. B. BAYLEY.

C. T. METCALFE.

Port William, 31 August 1830.

No. 13.

(Separate Department.—Opium.)

(No. 3, of 1830.)

LETTER from the Governor-General and Council in Bengal, to the Honourable the Court of Directors, &c. &c. &c.; dated the 21st September 1830.

Honourable Sirs :

1. SINCE we had the honour to address your Honourable Court, on the 31 ultimo, for the purpose of explaining at length our views and proceedings in regard to the revenue we have hitherto derived from Opium, the produce of Malwa, we have received from Bombay, Copy of a Minute by the Honourable the Governor, with a memorandum annexed, containing information on the subject collected by the Revenue Commissioner of the Northern Districts of that Presidency.

2. The Governor's Minute, though dated the 6th May last, was only forwarded to us in a Letter from the Secretary bearing date the 30th July.\* Had it reached us in time, we should of course have considered it our duty to draw your particular attention to the arguments by which Sir John Malcolm supports his views on this question, and endeavour to show that we determined injudiciously in opposing the plan suggested

\* Consultations. September 7, 1830, Nos. 22 and 24.



**Opium.**

gested by the Bombay Government, for combining the issue of passes with the arrangement for continuing sales, and that a considerable loss of revenue has been the consequence. It is right that your Honourable Court should be put early in possession of these arguments, and of our view of the questions discussed after yielding to them the consideration due to the quarter from which they have proceeded.

3. Sir J. Malcolm complains, in the first instance, of the small supply of the drug provided for the regular sales of the year, in Bombay, notwithstanding that the expediency of an increase had been advocated early in 1829, and the Supreme Government had then concurred in the propriety of the augmentation. In the resolution passed by us on the occasion of relinquishing the system of purchase and re-sale, in other words, the monopoly farm in which we had heretofore realized revenue from this source, we particularly explained the causes of the short supply referred to. The determination to increase the quantity of Opium provided was taken with reference to the monopoly, and to the restrictions on transit and exportation by which it was enforced. Upon the change of system, this consideration, though still an ingredient of the question, was nevertheless subordinate to the determination in the first instance of the principles upon which the concern should be conducted after the restrictive measures by which the monopoly was supported had been given up.

4. The officiating Opium agent in Malwa reported, that notwithstanding the change of system referred to, he should be able to provide a supply for the sales of the year equal to that of the preceding season, and influenced mainly by this circumstance, supported by the opinion expressed by the officiating agent, that the plan of purchase and re-sale might advantageously be continued, we resolved to make the experiment of leaving it in operation for the year. The result was as we have explained in our previous Letter, and as stated by Sir J. Malcolm in his Minute now forwarded, *viz.* that a sale supply, exceeding by 100 chests that of the preceding year, was actually provided and disposed of in the usual manner, yielding a considerable profit per chest, as will presently be shown.

5. But because there was at the same time a large exportation of Opium from Malwa by irregular channels, the supply to Demaun, amounting, according to estimate cited, to as much as 10,000 chests, Sir John Malcolm seems to cast blame on the arrangements adopted, on two grounds: First, It appears to be his opinion that, consistently with the determination taken to augment the provision for the Bombay sales, measures should have been adopted to procure by purchase for the Government the major part of the Opium so irregularly exported. Secondly, He complains that the plan he suggested, of allowing this illicit Opium to be brought direct to Bombay under pass, was not adopted; arguing, that by taking a consideration for the passes the Government might have secured a large additional revenue therein, besides that realized at the sales upon the year's provision, of 3,600 chests. Before discussing these points in detail, we would premise, that we did not look upon the questions which lay for our determination to be one of the expedients of the day. We had resolved upon the abandonment of the system of restriction by which the monopoly was supported, and it remained to decide how the concern established under that system should be wound up, and what permanent scheme should be substituted. Nearly half the season passed before the change in our intentions could

could be duly promulgated and made known in Malwa. Indeed, the agent's arrangements for the year were already so far in progress, as to afford the assurance of a provision on monopoly terms, equal to the supply for sale of the preceding year, when we had to determine as to the best mode of winding up the concern. We conceive that we could not, in prudence, under these circumstances, have acted otherwise than we did, and that in resolving to secure, so far as could be done under an abandonment of the restrictive system, the monopoly profit on the limited provision in question, and to defer the final arrangement of a permanent scheme till the close of the year, we consulted the true interests of the Government and of the nation. Originally we limited the purchases to 45 rupees per punsuree,\* the price at which the agent assured us of his ability to obtain an equal supply for the Bombay sales to that of the previous year; but subsequently, on his representing, in February of this year, that a large extra supply (4,000 chests) could be obtained by an augmentation of the price to 55 rupees, we authorized the increase, making that the limit. The agent's expectation of obtaining the further provision at this rate appears, however, to have been disappointed. At 55 rupees per punsuree, the chest of 140 lbs. would have cost 770 rupees in Malwa, besides the charges of establishment and transport; we cannot think it would have been prudent to have exceeded this limit for the prime cost of the article.

6. But the arguments of Sir J. Malcolm's Minute leave it to be inferred, that besides securing as much of the drug as could be secured on the terms of the old monopoly, he would have wished the Government to enter the market as a competitor for the purchase of Opium on any terms. It will have been obvious, from a perusal of the correspondence reviewed in our previous Letter, that it could only have been by out-bidding the sanguine speculators, who were drawn into this field by our change of plan, that any more of the drug could have been procured than was actually procured. If, however, yielding to the desire to increase the provision, we had authorized any such measure as a purchase without limit of terms, a rise considerably beyond the high selling price reached by the article in Malwa, which we were told was 60 rupees per punsuree, must have been the consequence; and we do not see how we could have refused the enhanced price to the contractors, with whom we might have made previous bargains, without creating amongst them dissatisfaction and an unwillingness to complete their engagements at the lower rates. At the same time purchasing high, with the prospect of reduced prices at the Bombay sales, consequent upon the increase of quantity thrown into that market, the inducement offered by participation in the net profit would have been taken away from those who furnished Opium under treaties, so that the drug would have been procured neither from them nor from contractors in the quantity stipulated, nor on any thing like the old monopoly terms. The result therefore would have been similar to what occurred previous to our interference with the management of the concern, when Opium was bought by the agent employed by the Bombay Government at prices which yielded no profit on the re-sale. On the whole, we doubt not your Honourable Court will look upon this part of the question as we do, and will be satisfied that an instruction to the Malwa agent to buy the whole produce at any price, would have amounted

\* Consultations, March 2, 1830, Nos. 20 and 22. April 13, Nos. 22 and 24.

to a resolution to prosecute as a commercial adventure what could not longer be carried on as a revenue monopoly; we need not enter on a discussion of the impolicy of following such a course.

7. With respect to the question of passes, from the manner in which this subject is mixed up with complaints against the smallness of the sale provision, it might be supposed that the Honourable the Governor desired the passes to be given for direct transmit to Bombay, conjointly with open competition purchases of the drug in Malwa for re-sale to exporters by sea. It will, however, at once occur to your Honourable Court, that the passes must have been given on terms to benefit the holders of the article, and consequently to make them unwilling to sell to our agent on the same terms as before. The ~~grant~~ of passes must therefore, so far as they conferred such advantages, have interfered with the purchases; so that the schemes were inconsistent, and could not be combined without loss.

8. Deeming them incompatible, we looked upon the question which lay for our decision to be, which of these two plans was entitled to the preference; our decision was taken accordingly in favour of continuing the monopoly for the year, and so closing the concern. But it may be urged against the arrangements of the year, that after having secured as much of the drug as could be obtained on the monopoly terms, with a view to a re-sale of this quantity for the sake of the monopoly profit, the Government might, besides this profit, have obtained a further profit by licensing or granting passes for the remainder of the Opium produced, but not procurable on its term. The argument in favour of this scheme, is that the Opium in question was and will always be exported in spite of the Government endeavour to prevent it. The exportation being made subject to charges to the smuggler or to the Demaun authorities, to the extent of which charges the Government might have secured a revenue.

9. As a general question we have fully admitted this principle, and our resolution to relinquish purchasing for re-sale from this year forward is founded entirely thereon; but we are at issue with the Bombay Government in the conclusion that the same revenue we propose hereafter to seek and to be content with, as a consideration for passes direct to Bombay for the whole Opium produce of Malwa, could have been obtained in the past season on the quantity exported to Demaun, without affecting injuriously the profit we hoped to obtain, and did obtain, on the monopoly supply of the Bombay sales.

10. Sir John Malcolm remarks on the difference of the average price at the last Bombay sales of the present year (Rs. 1,143. 2. 7.) as compared with the selling price of the preceding year (Rs. 1,671. 3.) The defalcation he attributes mainly to the increased supplies which found their way to Demaun. We are far from denying that this necessary consequence of our removal of the restrictions on transit and exportation from Malwa will have been a main cause of the fall of price by which the Government was deprived of so much of the usual monopoly profit per chest, but we are not prepared to admit that if passes had been granted, allowing the 10,000 chests said to have been exported through Demaun to be brought direct to Bombay, the Government could equally have reckoned on securing that portion of the monopoly profit which was included in the price realized on our 3,600 chests.

11. We do not look upon it as the same thing in the effect it would have had on prices at Bombay, whether the 10,000 chests were carried by the circuitous obstructed routes through which, after much detention and frequent change of conveyance, it finally proceeded to China, or were brought by the direct route to Bombay, under passes which would have insured the whole arriving contemporaneously with the supplies for the Government sales, to be offered there in direct competition with the Government Opium, and with equal facilities for conveyance to China. We were of opinion when the matter was submitted to us, and have yet seen no reason to adopt a different conclusion, that to have allowed the Opium of Malwa to proceed to Bombay under passes, on account of individuals, would have been to have set an unnecessary limit on our monopoly profit on the year's provision, through the immediate effect of this measure on the Bombay sales; besides which we thought it must interfere with our means of making that provision, even in the current year, by its effect on Malwa prices, and on the contractors' and state's deliveries, under the arrangements made. It is certain, too, that our future operations would have been embarrassed by the premature resolution to adopt partially a scheme inconsistent with that on which we were still acting, and which we might be desirous of continuing. Had we been convinced that the entire quantity of Opium alleged to have been conveyed through Demaun for exportation might, by early arrangements of a different kind from those adopted, have been brought to Bombay under passes, we should of course have weighed well the advantage to be derived upon the grant of these licenses against the profit expected from the limited quantity that could be provided for sale, and according as the calculation might have shown the larger revenue so would our measure have been taken. We are willing to be judged by this criterion in respect to the course adopted, and our resolutions for the future are based on the same principle of decision.

12. We have very recently received the Opium agent's estimate of the net profit actually realized at the year's sales, and a copy will be found annexed as a number in the collection of papers attached to this Letter.\* The statement, which is founded on the real charges, and needs only final adjustment to become the actual account of the year, shows a profit of H. R. 21, 87, 219, on 3,650 chests sold, the difference of number being occasioned by an over-weight in the chests dispatched from Malwa. The total cost per chest will be seen to be stated at H. R. 608, 12, and the profit is estimated at H. R. 599, 3, 9. Now we should submit that if passes had been granted for private Opium at the reduced price of 250 rupees per chest, a profit of near H. R. 600 upon re-sale of our own supply could scarcely have been expected; and if, through increased difficulty of purchasing in Malwa, on one hand, and competition on the other, to injure the sales in Bombay, the profit had been brought to nearly the rate of the passes, your Honourable Court will be able to calculate the extent to which it would have been necessary for the measure proposed by Sir John Malcolm to have been successful in order to save us from loss on the year's operations.

13. The Honourable Governor dwells in his Minute on the advantage that might be expected from a transfer of the entire management of the Malwa Opium concern to  
Bombay

Opium.

Bombay, on the ground of the superior acquaintance with the state of the markets, the available capital and views of speculators, and other commercial considerations necessarily possessed by the Government and officers of that Presidency. We are quite sensible that from proximity to the place of production, and from the circumstance that the outlet for exportation is on that side of India for the Opium of Malwa, the Bombay authorities have all these advantages. Nevertheless, while the concern was conducted as a monopoly, and as part of a system based upon the arrangements and resources of this Presidency, we should not have willingly seen it transferred, to be managed according to views and principles liable sometimes to be opposed to our own arrangements on this side of India, and the control of which could only have been exercised after the mischance if any were to result from such incongruities of view, had been actually done.

14. At the same time we have no desire to retain in our own hands any concern that can be as well managed by other agency; on the contrary, it is our study to relieve ourselves as much as possible from the mass of business and of references by which we feel that the Supreme Government is at present overwhelmed. We have accordingly left the Bombay Government to arrange the details of the pass system with the Opium agent, and if that plan can be acted upon with success, it is not our intention to interfere with the execution of the project. If it should fail, it will be our duty to consider again whether the monopoly shall be re-established under the partial restrictions which, through the command of the principal routes and best ports for exportation we possess on that side of India, or any other scheme shall be attempted in stead. The determination of this we shall be obliged to take upon ourselves, as connected with the general administration of the affairs and resources of your Indian empire.

15. We are taking measures for extending the cultivation of the poppy, with a view to a large increase in the supply of Opium to be offered for sale at this Presidency. Our proceedings for this purpose will be reported hereafter. In the mean time we look upon the difficulties which threaten this resource through the removal of the restrictions in Central India, and from which the restrictive system was not exempt, for during its existence the exportation from Demau to China was continually increasing, to merit the watchful care of Government; for the final effect of an increase beyond assignable limit in the quantity of this drug exported to China from both sides of India, is a result beyond the power of our foresight to discover, or even to hazard at present any speculation upon.

16. We take this opportunity to correct an omission and error in our last Despatch on this subject. We stated, that Major Stewart had not replied to our Letter, dated 12th January, calling upon him to state his opinion as to the course to be followed in succeeding years. His sentiments are conveyed in two Despatches recorded as noted in the margin.\* These letters, however, having arrived while the Governor-General and Secretary of the Department were temporarily absent from the Presidency, did not fall under their perusal, and being omitted to be included in the collection of papers made for preparation of our final Resolution on the subject, and of the letter to your Honourable

Court

Court reporting thereon, it was erroneously concluded by the Secretary, that no replies had been received, and the accuracy of his statement was not doubted. The error has been pointed out in a Despatch from the Opium agent in Malwa, just received in reply to the instructions addressed to him in regard to the new system. A copy of the Letter and of our reply is included in the collection appended,\* in order to put your Honourable Court in possession of our latest information on this important subject.

We have the honour to be, &c. &c.

(Signed) W. C. BENTINCK.

W. B. BAYLEY.

C. T. MORGAN.

Fort William,  
21st September 1830.

No. 14.

EXTRACT Letter in the Separate Department, from the Governor-General in Council in Bengal, to the Court of Directors; dated 27th July 1830.

130. THE Board of Customs, Salt and Opium, reported the quantity of Behar and Benares Opium, available for the sales of the year 1828. The total supply being 7,837 chests, the Board proposed to reserve 128 for Abkaree and other purposes, and to sell the remaining 7,709 chests under the same stipulations as were adopted in 1826-27.

No. 15.

EXTRACT Letter in the Separate Department, from the Governor-General in Council in Bengal, to the Court of Directors; dated 31st August 1830.

264. In a subsequent Letter, the Board reported the quantity of Opium available in 1828-29, and submitted the draft of notification for publication.

265. Although the quantity of Opium proposed to be advertised, 8,778 chests, exceeded by more than 1,000 chests the provision of 1827-28, yet we thought with the Board that, in the present circumstances of the department, it would not be expedient to withhold any of the year's provision from the sales.

SALT.

\* Consultations, September 15, 1830. No. 29 and 31.

**Salt.****SALT.**

No. 16.

**EXTRACT** Letter in the Separate Department, from the Court of Directors, to the Governor-General in Council in Bengal; dated 9th November 1814.

Letter from the Governor-General in Council to the Court of Directors, dated 5th February 1812.

(21) Revenue derived from Salt in 1810-11, 1811-12, and 1812-13, and Paras. 2 to 4 of Letter dated the 7th December 1813, in continuation.

Para. 11. The Annual Reports of the Board of Trade on the Salt Concerns of 1810-11, 1811-12 and 1812-13, exhibit the following results:—

Quantity of Salt provided in	Maunds.	Prime Cost.		
		per 100 Maunds.		
		Rs.	s.	p.
1810-11 ..	34,44,530	75	14	1
1811-12 ..	32,66,940	78	7	2
1812-13 ..	40,56,113	84	14	6

Bengal Salt sold in		Foreign and confiscated Salt sold.	Total sold.
		Maunds.	Maunds.
1810-11 .. ..	34,57,485	10,61,718	45,19,203
1811-12 .. ..	32,82,751	9,65,455	42,48,206
1812-13 .. ..	42,26,881	5,08,198	47,35,079

Selling Price of Bengal Salt in	Per 100 Maunds.	Of Foreign and confiscated Salt.	Average of both.
	Rs.   a.   p.	Per 100 Maunds. Rs.   a.   p.	Per 100 Maunds. Rs.   a.   p.
1810-11 ..	353   2   11	281   12   6	336   10   0
1811-12 ..	371   4   6	283   11   10	351   12   4
1812-13 ..	337   5   0	288   3   8	332   0   8

## Net Profit on the Salt Sales in

1810-11 ..	Rs. 1,13,41,684
1811-12 ..	1,12,67,489
1812-13 ..	1,14,40,202

12. It appears from the foregoing abstract statements, that in the year 1812-13 there was a great increase in the provision of Bengal Salt; that the prime cost of that species of Salt experienced a considerable augmentation in the same year; and that, though the sale-price was unusually low, the net-profit to the Company on the sales exceeded the profit of any former years since the establishment of the monopoly, with the exception of the years 1803-4, 1807-8, and 1808-9.

13. We

13. We sanction the commission which you have authorized to be paid to the agents, on account of the three years, 1810-11, 1811-12, and 1812-13 respectively.

14. Adverting to the voluminous Reports which are annually submitted by the Board of Trade, on the transactions in the Salt department, we concur in the opinion expressed in paragraph 3 of your Letter dated the 7th December 1812, that extracts from the correspondence so copious as those usually contained in these communications are unnecessary, and that more general Reports, accompanied with references to their recorded proceedings, would be equally satisfactory, care being taken that every thing of importance shall be brought into view, although in the most concise manner. Without entering, therefore, in this place, into an examination of all the details of the Reports now before us, and the most important of which we shall have an opportunity of noticing in reply to the sequel of your Letter, we shall confine our remarks to the measures which have been adopted for augmenting the provision of Bengal Salt.

15. The difficulty which had been experienced, and the expense which had been incurred in the years 1810 and 1811, in procuring a supply of Salt from the Coast of Coromandel, to make up for the deficiency in the produce of Bengal, together with the disappointment and inconvenience which resulted from a deficient supply of that article, notwithstanding the various encouragements that were held forth to foreign importers, indicated the expediency of devising some means of promoting the extension of the home-manufacture. For this purpose, you resolved on increasing the price paid to the Molunghees on all Salt delivered by them beyond the quantity stipulated in their contracts, or beyond the quantity which they had been in the habit of delivering, on the average of a given series of years. The price paid to the Molunghees in the Bulloah Purgunah (where the experiment was first made), for all the Salt delivered by them beyond the average produce of the agency for the previous ten years, was one rupee per maund; and a similar plan, under various modifications, was afterwards introduced into the other agencies.

16. A measure of this sort had the recommendation of being likely to secure a steady supply to the market, and to impose a check upon smuggling, by securing to the Molunghee a legitimate price for his surplus Salt, equivalent to the highest price given by the smuggler, and equivalent also to the amount of reward payable by Government for information of illicit hoards of that article. It probably did not escape consideration, too, that when, as in 1811-12, Bengal Salt sold for rupees 371, while Coast Salt sold for only rupees 283 per 100 maunds, a considerable addition might be made to the price paid to the Molunghees; and that the profit on the home-manufactured would still greatly exceed the profit on imported Salt.

17. That the encouragement thus held out has had the effect of increasing the provision of home-manufactured Salt, is evident from the documents before us; and we doubt not that it has tended to the suppression of smuggling; but we are far from being persuaded that it has augmented the revenue so much as the bounty would have done, had it either been less generally applied, or graduated on a more moderate scale.

18. If the Tumlook agency, it appears the increased price of labour and fuel urgently required some addition to be made to the price paid to the Molunghees; whereas the



agent for Hidgellee declared, in his Letter dated the 6th January 1812, the extension of the encouragement to that agency to be neither necessary nor expedient. The Board of Trade, however, having suggested to the agent that the Molunghees of his division, on finding that an additional price for surplus Salt had been granted to the Molunghees of the neighbouring agency of Turnlook, might be desirous of sharing in a similar indulgence, the plan was (improperly, in our opinion) introduced, merely on that ground, into the Hidgellee agency. The measure might be necessary in one agency, and altogether unnecessary in another differently circumstanced; and at all events, it would have been time enough to have granted the indulgence when it was asked.

19. Supposing, however, the expediency admitted, of a general increase of price to the Molunghees of the different agencies, the allowance of one rupee per maund, for the surplus Salt delivered beyond the amount stipulated in their contracts, or of the average deliveries of past years, seems to have been excessive. Of this, indeed, we have a partial acknowledgment in para. 14 of your Letter, in this Department, dated the 25th September 1813, where it is stated that you had required the Board of Trade "to report upon the success which had attended the foregoing plan, and likewise on the expediency of limiting the payments on that account, as, in the past season, the charges had proved very heavy, particularly in the 24 pergunnahs;" and the fact is still more explicitly admitted in the 28th paragraph of your Letter, dated the 2d October 1813, where you observe, on the authority of the Report of the Board of Trade, "that the quantity of Salt on hand exceeded the supply required to answer the periodical sales of the current year by nineteen lacs of maunds; and that, considering the embarrassment to the public funds, and likewise the increase to the public expenditure, which was likely to be experienced from so large an over-supply of this article, and which would, probably, be still further augmented, if the present system for the provision of Salt continued to be pursued, you had directed the attention of the Board, not only to the expediency of reducing the annual importations from the Coast, but also to that of adopting means to limit the provision of Salt in the respective agencies, and particularly in the district of Cuttack."

20. Not only is the charge which has thus been unnecessarily incurred, matter of serious regret, but the excessive increase, and subsequent reduction, of the bounty granted to the Molunghees is calculated, we fear, to occasion fluctuations in the Salt supplies very unfavourable to the interests of Government.

21. Since the preceding paragraphs were written, we have received your separate Letter in this Department, dated the 5th February 1814; and though you will perceive, from the tenor of the foregoing remarks, that we were prepared for a modification of the plan introduced in 1812, for augmenting the Salt provision, we own that we had not anticipated a complete abandonment of the system, as now announced to us, and that we were by no means aware of the vast expense attending it.

22. We learn from paras. 28 to 37 of the Letter referred to, that the arrangement by which an additional price was paid to the Molunghees for the surplus Salt, had so far increased the produce of the Bengal and Cuttack agencies beyond the quantity required to answer the annual Salt sales, that the balance of Salt likely to remain in store at the close of the year 1813 or 1219, Salt-style, amounted to maunds 26,15,721; that in order

to prevent further accumulation, and at the same time to reduce the existing balance in store, you had ordered the quantity to be produced in 1820 to be limited to mounds 37,72,000, and the quantity to be exposed to sale in the same year to be limited to mounds 47,00,000; that, with the same view, you had suspended your former orders for the extension of the monopoly to the Southern Division of the Province of Bengal; that you had directed the entire abolition of the surplus-plan; and that, as a compensation to the Molunghees for their disappointment, you had sanctioned the distribution of a sum of money among that description of persons in the agencies of Hidulpah, Tumlook, Bullooh, and Chittagong, amounting, in the aggregate, to sicca rupees seventy-five thousand one hundred and eighty-two (75,182).

23. These sudden changes of measures cannot fail to be productive of very great loss upon the interests of the public, and of the class of persons employed in the Salt manufacture. Your statement, that a reduction had been effected in the estimated expense of providing Salt, in the year 1814, at the four Bengal agencies, amounting to sicca rupees eight lacs sixty-one thousand seven hundred and seventy-two, (8,61,772,) justifies the inference that a very large sum had been unnecessarily expended on the provision of 1813. This expenditure, indeed, must have been positively pernicious, as well as unnecessary and wasteful, because it had an obvious tendency to allure people from other employments, to engage in the Salt manufacture, who, after the encouragement was withdrawn, would probably find it difficult to resume the occupations which they were thus tempted to desert.

24. We are also apprehensive, that the simultaneous resumption of the encouragements to the manufacture of Bengal Salt, and to the importation of Coast Salt, may occasion a future deficiency of supply, in some degree proportioned to the redundant supply which was produced by the combined operation of those encouragements.

25. In the whole of these proceedings we have been concerned to observe a want of foresight, united with an unfortunate tendency to go from one extreme to another; and we are sorry to add, that a derangement of the course of public industry seems to be the only result of a very expensive experiment in the management of our Salt concerns.

No. 17.

EXTRACT Letter in the Separate Department, from the Secret Committee of the Honourable Court of Directors, to the Governor-General in Council at Fort William, in Bengal; dated 10th May 1816.

Para. 10. UNDER the 53d George III., chapter 155, section 6, salt may be legally exported from this country to India, and as any of his Majesty's subjects proceeding in ships navigated according to law upon a voyage to the East-Indies, are permitted by the 54th George III., chapter 34, to touch and trade at the Cape de Verde Islands, where Salt may be procured at a very low price, we think it necessary to instruct you to take immediate measures for the protection of our Salt revenue. With this view we direct that

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that you will lose no time in preparing and transmitting home for our sanction, a regulation imposing such a rate duty on the *importation of all foreign Salt*, as shall have the effect of securing the revenue derived from that article, by which regulation it should be provided that the merchants shall be at liberty to deposit such Salt in the warehouses of the Government, previously to the payment of the duty, but that no such Salt shall be removed from thence until the duty be paid.

11. We desire that in framing both the Opium and Salt regulations you will consult with your law officers, with the view of preventing any legal difficulties in the way of their obtaining the sanction of the authorities in this country.

12. We fully rely on your active and zealous co-operation on an occasion where the public interests are so deeply concerned, and trust that you will lose no time in carrying our directions into effect.

No. 18.

EXTRACT Letter in the Separate Department, from the Governor-General and Council in Bengal, to the Honourable the Secret Committee of the Court of Directors, &c. &c. &c.; dated 11th October 1816.

Para. 1. We have the honour to acknowledge the receipt of your Despatch under date the 10th May last, communicating your sentiments on the means possessed by the Honourable Company and their several Indian Governments of guarding the revenue derived from the exclusive manufacture and sale of Salt and Opium; and conveying your directions that we should prepare and transmit to you regulations imposing such duty on the importation of foreign Salt and Opium, as shall have the effect of securing the revenue derived from those articles.

24. With respect to Salt, no regulation, we believe, will be required, either at Prince of Wales' Island or Fort Marlbro'.

25. How far the different circumstances under which a revenue is drawn from Salt at Madras and Bombay may render necessary, in the rules framed at those Presidencies respectively, some deviation from the draft now framed by us, the Governments of those Presidencies will, of course, best be able to judge; and we do not conceive that any material advantage would result from a reference to this Government on account of variations arising from such a cause.

No. 19.

EXTRACT Letter in the Separate Department, from the Court of Directors to the Governor-General in Council in Bengal; dated 24th October 1817.

Letter from the Governor-General in Council to the Court of Directors, dated 7th October 1815.  
 (75 to 81) Salt Accounts for 1820 &c. or any which have been brought before us since 1806-7. The net profit on the Salt sales of 1814-15 is stated at rupees 1,01,87,667 being

being less than the net profit in the year immediately preceding by rupees 40,08,417, and less than the average net profit of the seven preceding years by rupees 14,52,695. This decrease of profit is attributed to three causes: 1st, To an increase in the cost and charges of the Salt provided; 2dly, To a diminution of the quantity sold; and, 3dly, To the reduced prices obtained at the public sales.

28. The Board of Trade state in their Report of the 12th September 1815, that there was an increase of rupees 3. 3. 11. per 100 maunds in the cost and charges of the Salt sold in 1220,\* (1814-15) occasioned by the establishment having been borne by a smaller quantity of Salt in that year than in the year immediately preceding, and by the donation† which was granted to the Mohingtees on account of the abolition of the surplus system. The provision of Bengal Salt in 1220‡ having been maunds 11,00,177 less than the provision in 1219; and some of the items of charge in the Salt Department, such as callary rents, Zemindars moshaira and Salt-office charges being the same or nearly the same every year, whatever may be the quantity of Salt manufactured, they of course fall more heavily upon a smaller than upon a larger provision. We should, however, have expected that this circumstance would have been at least counterbalanced by the cessation of the heavy expense attendant on the surplus system.

29. The reduction of maunds 6,02,276§ in the quantity of Salt sold in 1220, and the simultaneous fall in price of rupees 17. 3. 1. || per 100 maunds cannot, we apprehend, be satisfactorily accounted for otherwise than by the prevalence of smuggling, which the proceedings noticed in a preceding part of this despatch establish, beyond a doubt, to have been carried on to a great extent in Behar.

30. The circumstance of there being no outstanding balances in the agencies of Tumlook, Hidgellée, and Bulloah and Chittagong, on account of the manufacture of 1220, is creditable to the agents in those divisions.

31. You will report to us the result of the measures which the agent in the 24 pergunnahs was instructed to take for the recovery of the heavy balance of rupees 34,668, reported to be outstanding in that division, and for the detection of the embezzlements of which the native servants were suspected.

32. The defalcation in the Salt revenue for several years past has been to us matter of the most serious regret; and though we have learned, from recent advices, that the sales in 1815-16 were more productive than those of the preceding year, we cannot too earnestly

\* Cost per 100 maunds of 82 Maas weight.

1219	..	Rs. 87	2	7	
1220	..	..	90	6	6

More in 1220 3 3 11

§ Quantity of Salt sold in

1219	..	Mds. 51,50,073
1220	..	.. 45,48,597

Less in 1220 .. Mds. 6,02,276

† Rs. 75,182.

‡ Provision of Bengal Salt in

1219	..	Mds. 48,60,227
1220	..	.. 37,69,050

Less in 1220, Mds. 11,00,177

|| Selling Price per 100 Maunds in

1219	..	Rs. 324	0	5
1220	..	.. 306	13	4

Less in 1220 .. Rs. 17 3 1

**Salt.**

earnestly recommend to your attention such measures as may appear most conducive to the restoration and improvement of this branch of the public resources. It certainly ought, under proper management, to advance with the growing population and prosperity of the country; and, as we have formerly had occasion to remark, we should, on every ground, greatly prefer a moderate profit on a large scale, to a higher profit upon a small one. We are aware, that as long as the Company continue to draw a large revenue from this article, the temptation to smuggle will continue to operate, but the temptation will be less powerful when the market is liberally supplied at a moderate price, than when it is sparingly fed, and the prices are exorbitant. We take this occasion most strongly to impress upon you, that nothing is further from our wish than that the population of the country should be subjected to the alternative of paying extravagantly for one of the essential necessities of life, or for procuring it by clandestine and illegal means.

**No. 20.**

**EXTRACT** Letter in the Separate Department, from the Court of Directors, to the Governor-General in Council in Bengal; dated 8th August 1821.

Letter from the Governor-General in Council, to the Court of Directors, dated 28th February 1817.

Letter 28th February 1827—Paras. 16 to 37.

Letter 4th July 1816—Paras. 11 to 13 and 39 to 44.

Letter 19th September 1817—Whole.

Letter 24th October 1817—Paras. 4 to 27.

Letter 17th July 1818—Paras. 47 to 59.

Letter 30th July 1819—Paras. 40 to 48 and 70 to 87.

Proceedings relating generally to the provision of Salt for the Calcutta sales, and to what extent it may be necessary to carry the manufacture of the Bengal and Cuttack agencies, and the importations from the Coast of Coromandel.

Para. 11. In our Despatch of 9th November 1814, we remarked on the tendency to go from one extreme to another in your proceedings relative to the provision of Salt, and expressed our apprehension that the simultaneous resumption of all the encouragements which had been given to the several sources of supply, might occasion a future deficiency in some degree proportioned to the redundancy which has resulted from the combined operation of these encouragements. Such a deficiency has occurred, and though it is attributed by you exclusively to extraordinary calamity of season, we cannot but think that a very considerable share of it must be ascribed to the sudden and simultaneous abandonment of

all the measures that had been adopted for securing an abundant supply.

12. Taking in one connected view the whole of your proceedings in relation to the provision of Salt, from the institution of the surplus system to the date of the latest documents in our possession, we cannot fail to be struck by the very great fluctuations in your management of this branch of the revenue, which assumes much more the appearance of a series of experiments towards the discovery of an efficient permanent system, than of a system itself; and, though we are aware that a definite and well-regulated scheme of management can only be founded on the well-established results of successful experience, yet we think it must be obvious to you, on impartial retrospection, that the experiments have been too hastily and generally made, and too hastily and generally abandoned. The surplus system, for example, was alike carried into effect and abrogated, in all the agencies simultaneously.

13. It is sufficiently on record that there was great difficulty in procuring a sufficient supply for the periodical sales prior to 1812-13; in consequence of which difficulty, encouragements had been given to large importation. The flourishing state of the Bengal manufacture

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manufacture in 1812-13 induced the Board of Trade to suggest that their encouragements should be withdrawn.

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14. The deficiency of the supply prior to 1812-13 was considered to have been owing, in a very great degree, to the prevalence of extensive illicit traffic; the Molunghees obtaining from the dealers in smuggled Salt a higher price than that paid by Government. It was therefore proposed that one rupee per maund, the price demanded by the Molunghees from the dealers in smuggled Salt, should be paid by Government to them on all surplus Salt produced by them above their takoods. This plan was carried into effect in 1812, at all the agencies, under the denomination of the surplus system; and it was expected that the advantages of this system would be immediately visible, in the satisfaction of the manufacturers, in the amelioration of their condition, in the stimulus which it would give to their industry, in removing from them the motives to illicit trade, in the consequent decrease of smuggling from the Aurungs, in the decrease of illicit traffic generally, in the increase of produce, in the increase of quantity delivered at the Government golahs, and in the increase of profit to Government.

15. That many of these advantages attended the adoption of the surplus system is unquestionable; but its operation, combining with the effects of two very favourable seasons, was attended with so large a surplus produce that the stock in hand at the beginning of 1814 amounted to 65,00,000 maunds, exceeding the quantity required for the sales of the year by 19,00,000 maunds. It was therefore determined to abolish the surplus system, and to restrict the manufacture below the average quantity required for the periodical sales, till the balance in store should be reduced to the standard at which it might be expedient to maintain it.

16. It was now stated, as a paramount disadvantage inseparable from the continuance of the surplus system, that it would cause a permanent injury to the Salt revenue, by causing a heavy increase in the expenses of the agencies, and involving the necessity of purchasing at an enhanced price a much larger quantity of Salt than could be required for the periodical sales.

17. Among the means of restricting the manufacture, it was suggested to abandon a certain number of the Aurungs. It was at this time observed by the Hidgellie agent (13th November 1813) that, "if any of the Aurungs were laid aside, it might be doubted if they could again be made efficient. The Molunghees might lose confidence in an employment on which their families had depended for generations, and might seek other sources of subsistence; and it might hence be difficult, if not impracticable, to increase the provision again when circumstances at a future period might make it expedient to do so." This remark was applicable, not only to the abandonment of Aurungs, but to every other cause by which a number of Molunghees might be thrown out of employ. and its truth has been verified by the great difficulties you have recently experienced in your endeavours to enlarge the produce of the agencies.

18. It was evident that the great and sudden restriction of the manufacture must either throw many Molunghees out of employment, or renew, with additional force, their former temptations to illicit traffic. Such was the result; many Molunghees were thrown out of employment, and a very enlarged illicit traffic appeared among the immediate consequences of the restriction.

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19. The reduction of the balance in store was now a primary object with you, and your Letters, as far down as the second of those now under reply (28th February 1817), pointed out the progress which you were making in this reduction by means of continued restriction on manufacture and importation. In the Letter last referred to, you expected that the balance in store would be reduced by the end of 1817 to about 14,00,000 maunds, at which amount you considered it would be expedient to maintain it, to guard against future deficiency from unfavourable seasons. But in the Letters of the 4th July and 19th September following, you inform us, that, in consequence of the singularly unfavourable circumstances of the season of 1817, the restrictions on importation had been suspended, the sales of the year had been but 44,00,000 instead of 46,00,000 maunds as had been intended, and the stock in hand had been reduced to 3,30,589 maunds. The provision of the year was thus found on the 19th September to have fallen short of your expectations on the 28th February by 12,69,411 maunds.\* You found it necessary, therefore, to enlarge the provision of the Bengal agencies, and the importation from the coast of Coromandel.

20. In your Letter of 24th October 1817, you communicate to us the results of the reports for which the Salt agents had been called on, with respect to the capabilities of the Bengal Aurungs, and their maximum, medium, and minimum produce under the several contingencies of favourable, moderate, or unfavourable seasons; and you enter into a speculation on the probable results of these several contingencies in connection with the several contingencies of the results of the Cuttack agency, and of enlarged or restricted importation. In consequence of the views which these several results presented to you, you directed an enlarged importation from the coast, and ordered the several Salt Agents to form arrangements for the manufacture of the maximum quantity specified in their several estimates.

21. In your Letter of the 17th July 1818 you inform us, that, with reference to the deficient sales of the preceding year, and the high price of Salt then prevalent, you had resolved on bringing to sale 48,00,000 maunds, and on selling a larger quantity than usual at the earlier sales, and that, in pursuance of this resolution, you had already sold at the three first sales of 1818, 35,00,000 maunds; but that the produce of the agencies having been less than the medium produce, and the supplies from Cuttack having been very deficient, it would be necessary either to reduce the proposed quantity of the September sales, or to include in them a disproportionate quantity of foreign Salt. With a view, however, of supplying as large a quantity of Pungah Salt as possible, you intended to sell by anticipation two lacs of maunds of Cuttack Salt, to be delivered by the 1st February 1819, which you inform us in your Letter of 30th July 1819 had been

* Balance in Store; end of 1816	.. ..	23,92,230
Expected to be reduced	.. ..	14,00,000
Actually reduced to	.. ..	3,30,589
		10,69,411
Sales less than intended, by	.. ..	2,00,000
Provision short of Estimate 1817	.. ..	12,69,411



been favourably effected; but the deficiency on the produce of the agencies and in the supplies from Cuttack had compelled you to reduce the September sales of 1818 from 13 lacs, as proposed, to 12 lacs of maunds, and that consequently the sales of 1818 had been reduced in quantity one lac of maunds below the scale you had originally determined to adopt. You add that, for the same reasons as in 1818, you had resolved on bringing 48,00,000 of maunds to sale in 1819, which we find you effected,\* and that, from the very small amount of the balance in store, you had authorized an unrestricted manufacture in the several agencies, and had required the same large importation as in the preceding year from the coast of Coromandel. You observe that you shall nevertheless anxiously labour to place the system permanently to be pursued on such a footing as to secure the greatest practicable public advantage, although present emergencies may compel you to depart from that course which, under ordinary circumstances, you should have deemed it right to pursue. You observe also, "We informed the Board at the same time that it was of course desirable to avoid, if possible, any increase in the cost of manufacture, provided the requisite quantity could be otherwise secured. It is still more essential to the prosperity of this branch of the revenue that any encouragement which may be given to the manufacture should be of a kind to be permanently continued without inconvenience, so that the quantity manufactured may not exceed what the fixed annual demand of Government requires. Any sudden and temporary increase which shall lead to subsequent restrictions, similar to those which have been necessarily imposed for some years past, must, in our judgment, infallibly be followed by an enlarged illicit traffic; whereas it may be hoped that, if the capabilities of the several agencies are judiciously called forth under an active, prudent and well-regulated system of management, the almost entire produce of the country may be brought into the Government golahs, and a check be thus given to smuggling much more effectually than by any direct measures of prevention."

22. The establishment, however, of a definite, well regulated system of management must depend on the full and clear understanding of the following points: The probable permanent standard of the annual demand; the consequent permanent standard of the annual provision; the respective proportions of that provision which it may be desirable and practicable to supply from the respective sources of manufacture and importation; the manner and degree in which the interests of your Presidency, and those of the Presidency of Fort St. George, may be affected by the adjustment of these proportions; and the amount of the balance which it may be desirable to hold permanently in store, to guard against the deficiencies of unfavourable seasons.

23. These points you have repeatedly brought to our notice as having been referred for the report and opinion of the Board of Trade, of the several authorities subordinate to that Board, and of the Government of Fort St. George.

24. In your Letter of 17th July 1818, you refer us to a Report of the Board of Trade, dated 23d September 1817; and we find recorded on your consultations of 16th December

Three first Sales .. .. .	25,00,000
September Sales, Consultations, 1st Oct. 1819 ..	13,00,000
	<u>48,00,000</u>



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December 1818, a Letter from the Secretary to Government at Fort St. George, dated 10th November 1818, transmitting a communication from the Board of Revenue with respect to the supply of Salt from the coast to Bengal.

25. We also find recorded on your Consultations of the 6th May 1819, a report of your Board of Trade on the above communication, and your consequent reply to the Government of Fort St. George. After so repeatedly calling our attention to your expectation of those communications, we are surprised at your not having, when they were at length received, brought them specifically to our notice.

26. The probable permanent standard of the annual demand, and the consequent permanent standard of the annual provision, are assumed by the Board of Trade in their Report, dated 23d September 1817, at 46,00,000 maunds. This estimate does not appear to be made on any satisfactory grounds. We see, indeed, every reason to think that this may be assumed as the minimum amount of the demand of the market, supposing all circumstances to continue as at present; and that at the same time, even under present circumstances, a larger quantity might be advantageously sold. The amount of the sales, the amount of the selling price, and the net profit of the revenue have increased together during the last four years: *viz.*

		Maunds of Salt.	• Net Profit.	Selling Price.
			Rs. R.	
In a subsequent Collection " Salt Account."	1221 or 1815-16	39,34,663	83,84,508	314 12 0
	1222 or 1816-17	44,48,676	96,57,251	334 8 4
	1223 or 1817-18	45,18,697	1,04,66,030	336 3 0
	1224 or 1818-19	47,95,342	1,11,42,639	1 4 3

27. It is evident that improved efficiency in the checks to illicit traffic will increase the demand on the lawful market. We speak only of the actual demand of the market as it now exists, without taking into consideration the probable increase of demand from the improvement of the country and the increase of population. Increased demand from the latter causes will be gradually progressive, and may be met by gradually progressive measures.

28. The profit derived by you on the coast Salt sold at the Calcutta sales is confessedly very inferior to that derived from the Salt manufactured at the Cuttack and Bengal agencies. In the degree in which the joint profit derived by you and the Government of Fort St. George from the coast Salt is inferior to the single profit derived by you on the Salt of your own agencies, a loss is sustained by the trade in coast Salt; and the Company, which is equally interested in the transactions of both Presidencies, must be considered a loser by the difference, there will remain only the advantage derived by the ship-owners to be set off against this loss; and unless it can be shown that the advantage derived by them is, on an enlarged view of the question, an advantage well purchased by the loss sustained by us, the expediency of continuing the importation of coast Salt is not on this ground made apparent. The necessity of importation will then stand on the sole ground of the inadequacy of the agencies to the supply of the market. This inadequacy is by no means clearly established. The very great redundancy of the supply under the operation

of

of the surplus system, and the very extensive measures which, in consequence of that redundancy, you adopted for checking the too great production of the agencies, would seem to show that the agencies alone are, under certain circumstances of encouragement, even more than adequate to the full supply of the market.

29. The Board of Trade in their Report dated 23d September 1812, advert to a Letter addressed to the Government of Fort St. George by the Board of Revenue at that Presidency on the 12th November 1813, from which it would appear that the revenue derived by the Government at Fort St. George from Salt exported to Bengal is very inconsiderable; but that the trade being of material assistance to the ship-owners, the Board of Revenue would, on the latter account only, regret its extinction.

30. It appears from the Report of the Madras Board of Revenue, dated the 11th November 1818, that the profit to the Madras treasury on a Madras garce of Salt, 120 Bengal maunds, is on an average about eight Arcot rupees;\* and though the Board of Revenue propose, when the stock in hand at Covelong is exhausted, to confine the exports to Bengal chiefly to Rajahmundry and Nellore, when it will be fair to calculate the average revenue derived by the Company at the Madras treasury on Salt exported to Bengal at 12 Arcot rupees per garce, still the profit is so inconsiderable as to weigh nothing in the scale against the great inferiority of the profit derived by you from the sale of the imported Salt, compared to that derived from the Salt of the agencies. The difference is estimated, in the Report of the Madras Board of Revenue, at about 84 rupees per % maunds; but it appears to be most correctly estimated by your Board of Trade on an average of ten successive years (excluding the years of the surplus system), at 63. 5. 7. per 100 maunds. The loss sustained by the general Government is therefore sicca rupees 54 on every 100 maunds of coast Salt imported by your Presidency.† The loss on 3,000 maunds is 1,62,000 sicca rupees.

31. "If," says the Madras Board of Revenue, "by relinquishing altogether the importation and sale of Coast Salt in Bengal, and increasing to a corresponding extent the sale of Bengal Salt, the price of the latter would not be affected, nor the total quantity of Salt purchased in any material degree diminished, it would follow that this sum (of sicca rupees 1,62,000) is sacrificed, and that all considerations immediately connected with

	Total Charges. Sa. Rs.	Profit to the Madras Treasury.
Vizagapatam ..	16 5 5	7 10 7
Rajahmundry ..	11 15 0	12 1 0
Nellore ..	12 15 7	11 0 5
Covelong ..	17 14 5	5 1 7
Tanjore ..	12 8 11	10 7 0½
† Loss to Bengal ..	.. ..	63 5 7
Gain to Madras ..	.. ..	9 5 7
		54 0 0

Twelve Arcot rupees per Madras garce being Sa. Rs. 9. 5. 7. per 100 Bengal Maunds.

## Salt.

with the merchants and inhabitants of the coast ought to give way before so serious a sacrifice of the public revenue."

32. It appears, so far as we have at present means to judge, that the interests of the Government of Fort St. George are not promoted by the exportation of coast Salt; that the interests of your Presidency suffer by the importation of it, and that the only two arguments for its continuance beyond the absolute deficiencies of the agencies are, 1st, the necessity of promoting to a certain extent the interests of the ship-owners at the expense of your own revenue; and, 2dly, the necessity of supplying the market with a certain quantity of the worst kind of Salt.

33. With respect to the first of these points, we cannot admit it as deserving of consideration, unless it were shown that, through the limited encouragement given to these ship-owners, an advantage were derived by the Government or the Public, of which, under any other circumstances, they would be deprived.

34. With respect to the second point, the necessity of supplying the market with a certain quantity of the worst kind of Salt, the Board of Trade is of opinion that, because a part of the population has become habituated to a bad kind of salt, and prefers it on account of its cheapness, the Government must necessarily continue to bring a certain proportion of inferior Salt to sale, and that this inferior Salt can, with most advantage to the revenue, be furnished by importation from the coast of Coromandel. We think the solidity of this opinion very questionable. If the whole quantity supplied were Pungah Salt of the agencies, or if the requisite quantity of inferior Salt were supplied by Kur-lutch Salt of Cuttack, and if the supply of coast Salt were discontinued altogether, it is not to be supposed that the former purchasers of the coast Salt would not become, to the extent of their means and necessities, purchasers of the substituted supply; they would purchase at least an equal, and, in all cases in which their means would admit it, to a greater money value than before: it is matter of easy calculation that the same gross receipt on a given quantity of coast Salt, and on a smaller quantity of Bengal Salt, yields a higher net profit in the latter than in the former case;\* the public revenue, therefore, would not suffer by the change; but it may be said that the means of the poorer classes of the community enable them to consume only the smallest possible quantity of the worst kind of Salt, and that if the worst kind should cease to be supplied, the inevitable diminution of the quantity of their consumption will be a serious grievance to them, to which the improved quality will not be a counterbalancing advantage. This difficulty, however, is sufficiently met by the remarks of the Board of Trade, in their Letter of 30th March 1819; that the measure of relinquishing the importation of coast Salt

" would

## \* Example 1817-18.

		Rs.	
The sale price per % maunds Bengal Salt was .. ..	360	7	10
Ditto Coast Salt .. ..	270	0	10
The net profit per % maunds Bengal Salt was .. ..	276	0	5
The Coast Salt .. ..	167	4	10
20,000 rupees would have purchased, of Bengal Salt ..	5,548	mds.	
— of coast Salt .. ..	7,405	3	14
Net profit on 5,548 maunds of Bengal Salt.. ..	15,313	7	9
On 7,405. 3s. 14c. of coast Salt .. ..	12,407	6	3

would ultimately be attended with a proportionate advantage by enabling them (provided the Bengal and Cuttack agencies were capable of satisfying, without any risk of failure, the entire demand of the Bengal market) to give to the consumers a better Salt at the price probably now paid for coast Salt, and by bringing an quantity of Pungah Salt to sale, to make up for the diminution which such sale would naturally occasion in the price; and by lessening the temptation, to give a check to the illicit manufacture and traffic in Salt."

Salt.

35. Still it is evident that the interests of the Bengal Presidency are proportion as the quantity of Cuttack and Bengal Salt predominates over that of foreign Salt in the periodical sales: it is therefore incumbent on you (giving all due consideration to the interests above-mentioned) to aim at supplying the sales with the maximum of Cuttack and Bengal Salt, that the capabilities of the agencies will allow, and the demand of the market will require, and with the minimum of coast Salt that the deficiencies of the agencies, and a liberal consideration of the interests above-mentioned may render it imperative on you to supply.

36. The Board of Trade is of opinion that 3,00,000 maunds of coast Salt will be an adequate permanent standard of importation; and though present circumstances have obliged you to exceed this quantity as a temporary arrangement, and to extend the importation to 8,00,000, we conceive that, with the agencies in a proper state of efficiency, and a proper balance in store, it will never be necessary that a larger quantity than 3,00,000 should be imported. Under such a limitation of the supply, we trust that the Government of Fort St. George will experience little difficulty in furnishing you with the best description of Salt, and in effecting an arrangement by which that supply may reach Calcutta in an unadulterated state.

37. In taking into your consideration the measures of entirely dispensing with the supply which you have been in the practice of drawing from the coast, it will be necessary to bear in mind the effects which any sudden abandonment of the demand from Bengal would have upon the Salt Revenue of Fort St. George, either by throwing so considerable a quantity of the produce of that Presidency on the hands of the Government, or by affording the Molunghees the means of creating an extensive contraband traffic.

38. The very small balance of Salt in store, and the inadequate production of the agencies during the two or three past seasons, evidently rendered necessary the directions you have given, for enlarged importation as a temporary measure, and of giving the Molunghees of the Bengal agencies to understand that they should be allowed to extend the manufacture, without restriction to the quantity which might be specified in their respective tahoods. You have also authorized, on the suggestion of the Salt agent, the revival of the surplus system in Cuttack with certain modifications, which will render the extra expense from the measure very trivial, in comparison with the great advantages that promise to result from it, both to Government and to the people of Cuttack; to Government, from the enlarged produce of the agency, which is confessedly its most profitable source of supply; to the people, from restoring to them in its full extent a branch of beneficial employment, the restriction of which had operated most injuriously on their prosperity, and of which restriction, after the promises which had been held out to them, they had very just reason to complain.

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39. The amount at which it may be expedient to maintain the balance of Salt in store, you estimate, in your Letter of 28th February 1817, at 14,00,000 maunds. And we observe, that in the Board of Trade's Letter of 30th March 1819, and in your Secretary's Letter of 6th May following, the proposed amount of the balance in store is 15,00,000 maunds, viz. 10,00,000 in Bengal, and 5,00,000 in Fort St. George. There are many considerations which induce us to question the sufficiency of these estimates. The balance in store at the end of 1816 was ..... Maunds 23,99,230

The balance you expected on the 28th February 1817, would be reduced } 3,30,589  
by the end of 1817 to about 14,00,000, but it was actually reduced to }  
You were thus obliged to draw, for the supply of the year, from the } 26,68,641  
balance in store .....

And notwithstanding this, you were still obliged to sell 2,00,000 maunds short of the intended sales. Under the circumstances of this season, it would have been necessary to have had in store, at the end of 1816, 36,86,641 maunds, in order to meet the full demand of 1817; and to have in store, at the end of 1817, a balance of 14,00,000 maunds. Notwithstanding the enlarged importation and unrestricted manufacture of 1818, the supply fell short of the estimate, and you were obliged to sell one lac of maunds less than you had intended for the sales of the year. The balance in store at the end of 1818, was 2,86,589. Under the circumstances of this season, it would have been necessary to have had in store, at the end of 1817, maunds 15,44,000, in order to meet the full demand of 1818, and to have in store, at the end of 1818, a balance of 14,00,000 maunds.

40. In the year 1818, the various sources of supply were called on for unrestricted exertions. Taking the years 1817 and 1818 together, you drew from the balance in store ..... 20,68,641  
44,000

21,12,641  
and diminished the intended sales by ..... 3,00,000

The joint deficiency of these two years was, therefore..... Maunds 24,12,641

41. The minimum produce of the Bengal and Cuttack agencies is estimated at ..... 33,53,000

It is also stated to be at any rate not desirable, as a permanent measure, } 3,00,000  
to import from the Coast of Coromandel more than .....

36,53,000  
The demand of the market has not of late been less than ..... 46,00,000

Deficiency in unfavourable seasons..... 9,53,000

Therefore, in the event of two successive unfavourable seasons, the deficit of 19,06,000 maunds must be supplied either by enlarged importation or by a balance to that amount in store.

42. Therefore, on the ground of experience, to guard against one such season as 1817, or two such seasons in succession as 1817 and 1818, would require a balance in store of nearly 25,00,000 maunds; and on the ground of calculation, to guard against two successive unfavourable

unfavourable seasons, yielding only the minimum produce, would require a balance in store of nearly 20,00,000 maunds; and in both cases the supply of the market would consume the whole of the balance. These considerations would seem to show, that the permanent standard of the balance in store ought not to be assumed at less than 20,00,000 maunds; but we do not by any means lay down this deduction as a rule for your guidance. We content ourselves for the present with calling your attention to a view of the subject which we conceive ought to be taken, in order that your prospective measures may derive the best use from the results of experience.

43. In the preceding examination we have taken a careful view of the present state of information and opinion on all the important points connected with the provision of On some of these points the results of further experience appear to be wanting, definite permanent system can be established. In the mean time, by giving the highest degree of encouragement to the best source of supply, in revising with very judicious modifications the surplus system in Cuttack, by giving the second degree of encouragement to the second best source of supply, in sanctioning an unlimited manufacture in the Bengal agencies; and by recurring for the supply of present deficiencies to the third and least beneficial source of supply, importation from the Coast of Coromandel, on an enlarged scale, as a temporary measure only, till the present necessities be removed, and till the various interests involved in the continuance or abrogation of that importation be better understood, you appear to have graduated your present measures on the most judicious scale which present circumstances allow, and to have left a sufficient opening for more permanent future arrangements.

No. 21.

EXTRACT Letter, in the Separate Department, from the Court of Directors to the Governor-General in Council in Bengal; dated 17th November 1826.

Para. 52. We are desirous that the price allowed to the Molunghees for their Tydaad Salt should, according to the circumstances of each place of manufacture, be such as to afford them an adequate profit, and that the greatest attention should be bestowed by the agents and their superintending officers in ascertaining as correctly as possible the productive powers of the various Aurungs, before they enter into detailed engagements with the manufacturers.

Letter from the Governor General in Council to the Court of Directors, dated 30th July 1824 (229 to 233). Temporary adoption of the surplus system, or an enhanced price of the Salt delivered by the Molunghees in excess of their engagement.

53. In general we conceive that this adequate price would suffice to call forth the productive powers of the several Aurungs to the full extent of their capabilities; and if the engagements formed by the agents with the Molunghees were duly proportioned to those capabilities, the means of effecting a surplus produce would be so much limited that the danger of smuggling from that source would not be very great. When a bounty, as on the present occasion, is given to each manufacturer for all the surplus Salt which he

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may be able to deliver before the close of the manufacturing season, we are of opinion that this bounty should be regulated by the quality and quantity of the Salt delivered, and not with reference to its proportion of the tydaad.

54. As it is to be expected that in proportion as you succeed in preventing smuggling, the demand for the Government Salt will increase, we are led to hope the inconveniences which induced Government in 1813-14 not only to abandon the surplus system, but greatly to diminish the tydaads of the several agencies, will not be again experienced; and when such is the case a resort may be made to the surplus system with less apprehension of danger.

**No. 22.**

**EXTRACT** Letter in the Separate Department, from the Court of Directors to the Governor-General in Council in Bengal; dated 11th July 1827.

Letter from the Governor-General in Council to the Court of Directors, dated 23d March 1821. (94 to 101; also Letter 19th December 1822, and 30th July 1823, paras. 2 to 10; 17 and 158 to 176.) Salt accounts for the years 1818-19 to 1822-23, and provision for the years 1820-22 and 23; also explanation of the circumstances which led to the high price of Salt in 1822, and of the measures taken for preventing their recurrence.

Para. 23. THE results exhibited by the accounts of these years are certainly in a high degree satisfactory. They indicate good administration in all the agencies; but we regret to observe that the very desirable object which you have long had in view, of effecting an increase of revenue from enlargement of consumption, instead of an increase of price, has yet been so imperfectly attained.

In the 160th paragraph of your Letter in this Department, of 30th July 1823, you observe that, "though the prices have been higher than we could have wished, the result of the statements" for 1820-21 and 1821-22 afford a gratifying evidence of the stability of this branch of the resources of Government. We are, however, of opinion, that the stability of the Salt revenue, as well as the comfort of the people, essentially depends upon the extension of consumption.

24. In that part of the 3d paragraph of your Letter of the 30th July 1823, in which you speak of fixing the net revenue which it is necessary to draw from the Salt monopoly, your meaning doubtless is, that whenever it appears that the average rate of consumption will, at the stated price, produce more than the amount which you have so fixed, the price shall be reduced. Of this principle we cordially approve, but should not less strenuously condemn any attempt to keep up the revenue of this amount through enhancement of price. The greater the quantity on which a given revenue is raised, the lighter, of course, as you justly remark, is the taxation, and the more secure the public resources; while another material advantage is, that by lowering the price you diminish the temptation to smuggling; and hence, that measures less annoying to the people, and of less expense, will suffice for its prevention. We are extremely happy to perceive that you attach importance to the diminution of the cost of this article to the people, which, to so great a part of them, constitutes their only luxury. We hope and confidently trust that there will be sufficient enlargement of sale to enable you to realize an adequate amount

amount of revenue from this source, consistently with a reduction of price, which of course will be gradual, but finally we doubt not will be large. We however wish you to consider whether, instead of periodical sales, the public might not be supplied with Salt from the Government warehouses at a fixed price, whereby the subordinate monopoly of the Salt merchants, who now purchase the Salt in large quantities at those sales, would be prevented, and Salt would not be liable to those excessive fluctuations in supply and in price to which the article is now subjected. We only throw out these suggestions for your consideration. We are most anxious that a limit should be put to the rate of this tax, and that the people should have the benefit, in reduction of price, of any increase of sale which the progress of demand may produce.

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25. We are happy to perceive, by the experience of the last two or three years, that no apprehension is to be entertained of the want of means in the combined agencies, of extending the manufacture sufficiently to meet any demand; and all that is wanted is, that the Superintending Board should carefully attend to the circumstances influencing the demand and supply, a correct estimate of which will always enable you to adjust the one of these to the other.

26. We attach great importance to the experiment which is going on at Saugor, and conceive that very sanguine hopes may be entertained of its leading to the discovery of improved methods, by which the cost of production will be reduced, and the means of regulating the quantity to any state of demand will be placed more completely and promptly at your command.

27. The prospect with respect to the supply of Salt from Madras has also materially altered, the quality having been improved, the relative price has so much increased, that a greater rate of profit has been derived from it than from the average of the Bengal manufacture. We are anxious to be furnished with a report on the comparative qualities of the Coast and Bengal Salt, and on the means which have been successfully adopted for improving the quality of the former. In procuring this information from the Government of Fort St. George, we desire that you will enter into a full consideration of the advantages to be derived by an unrestricted trade in Salt and Grain between the two Presidencies, as the inconveniences resulting from the inferior quality of the Coast Salt can no longer be assigned as a reason for restricting the trade in those articles. The motive which exists for increasing it, as far as can be done without counterbalancing inconvenience, is sufficiently obvious.

28. The attempt of the more extensive dealers to create a sub-monopoly in their own favour, which occasioned the rise of price in 1822, defeated itself with so much loss and so much danger of ruin to the parties concerned, that we think with you there is little hazard of any such purpose being renewed. You are now also upon your guard, and, in case of a repeated attempt, the indulgence which you granted to them will not again be expedient.



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No. 23.

EXTRACT Letter in the Separate Department, from the Court of Directors to the  
Governor-General in Council in Bengal; dated 10th June 1829.

Letter from the Governor-General in Council, to the Court of Directors, dated 31st May 1827. (137 to 147, and 234 to 237.) Correspondence referred to, in proof of attention to the improvement of the Salt administration, particularly in respect to two points: sufficiency of supply, and security of the Revenue; directed against taxation of Karree Noon manufactured in the good or ill effects of the reputation of Mr. Chester for the purpose of inquiry; increase of price to the Molunghees in Bulloah and Chittagong, proposed by Mr. Chester; increase granted to those in the 24 pergunnahs.

Para. 34. THE correspondence to which we are here referred is voluminous; and we perceive by it that no small portion of your time, and of that of the local officers and Board has been bestowed upon it. We are sorry not to be able to add that the good effects have been correspondent; for neither in respect to sufficiency of supply, nor protection of the Revenue, do we see any reason to conclude that your securities are improved. You observe that much of the subject was still under consideration, and could not be finally disposed of in the Letter then to be despatched. In these circum-

stances we must content ourselves for the present with repeating, as we have often done, our great anxiety that you should be able at last to mature your plans upon this great concern, and let us know with some degree of certainty, what it is, and what it is not in your power to effect.

35. We perfectly concur in your decision with respect to the Kharee Noon manufactured in Behar, and in the sentiment on which the decision was grounded, that a measure is not advisable "which cannot but be harsh in its operation upon the poorer classes, and at the same time productive of little, if any, net revenue to the Treasury."

36. We have observed on your consultations, though not noticed in your Letter, a correspondence with the local officers in the several agencies on the question respecting which we formerly communicated to you our doubts, *viz.* whether the separation of the golah and the manufacturing omiah, or performing both sets of duties by one set of officers, was attended with the greatest advantages. As far as a very general concurrence of opinion affords evidence, you had reason to decide as you did, that the plan of separation is the best. You had also, we think, evidence to justify the favourable opinion you retain of the Chokee system.

37. Our attention has been attracted, in a particular manner, to the correspondence on the subject of increase of price to the Molunghees. You have recognized the necessity of granting an increase of three annas per maund in Pergunnah Calcutta, under the apprehension that the Molunghees would otherwise desert the manufacture. Yet the circumstances stated in the letter of Mr. Secretary Mackenzie to the Salt Board, dated 14th September 1821, and quoted in our Letter to you in this Department, dated 11th July 1827, led you to doubt the statements of the agent regarding the insufficiency of the existing remuneration. With respect to the other agencies you have suspended decision and desired further information, having deputed Mr. Chester, a Member of the Board, to perform for that purpose a local investigation. In the mean time, in order to obviate a threatened deficiency in the supply of the year, you had authorized an additional remuneration for any quantity manufactured after a certain date. And we cannot but apprehend,

apprehend, from the whole import of the correspondence on the subject, that you will be under the necessity in future of paying a higher price for the manufacture.

34. With this prospect of an increase of cost, added to all the difficulties under which you labour from uncertainty of seasons, fluctuation of supply, and still, after all your promises, insufficient supply, we cannot but express our surprise that the means of obtaining from the coast, without any uncertainty, any quantity which you may desire, and (as we are informed on good evidence) of the best quality, should constantly appear to escape your attention. We shall call for more complete information on the subject from the Madras Government, and shall not decide without mature consideration; but the present impression on our minds is, that an arrangement far preferable to that which now exists might be made for obtaining the whole of your supply from the coast, and putting an end to the Bengal manufacture, with its complicated and most expensive machinery, altogether.

39. Your deliberations respecting the propriety of distributing Salt to the Molunghees for their own consumption; of establishing retail shops in Chittagong upon the plan of those in Cuttack; and of suppressing the manufacture of Noon Chye in Chittagong, offer no occasion for particular notice at present.

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No. 24.

EXTRACT, Letter in the Separate Department, from the Court of Directors to the Governor-General in Council in Bengal; dated 4th November 1829.

Para. 22. On the occasion of stating their opinion respecting the quantity of Salt which it would be expedient to bring forward for sale during the year, the Board entered at large into the general policy of increasing the supply, and delivered it as their conclusion, that any extension much beyond the actual supply, would be attended with great loss to the revenue.

23. We confess that their reasonings are far from being as satisfactory to our minds as they appear to have been to yours. It appears to us that the Board rather assume, than prove, the great fact upon which the whole question must turn, whether the population generally do, at the present prices, receive a full supply of the article; or whether the high price does not compel them to content themselves with a quantity below what they would like to enjoy. It is not a solution of this question to tell us, that there is a certain quantity of Salt which answers the demand of every individual; and when the individual has already the command of that quantity, he will increase it but little, however much the price may be reduced. This nobody doubts; but still the question remains, whether or not the population of Bengal do obtain this full quantity. The opinion which we have long entertained is that they do not; and that at a lower price they would consume a larger quantity.

24. We are quite willing to allow, that on neither side of this question can an opinion be considered as more than probable. It is to be determined by experiment, and not by opinion, least of all by the opinion of the Salt merchants. We also fully concur with

you,

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you, that in the present state of your finances, the experiment ought not to be tried in such a manner as to risk any considerable loss of revenue. But we see no reason to anticipate that such would be the effect of a moderate but steady increase of the quantity from year to year. The result of any one year, it is obvious, cannot be regarded as a test; a series of years are required, more especially with the means which, under the present system, are possessed by the Salt merchants, of influencing the market, and which means the anticipation system, which you have since abandoned, was well calculated to augment.

25. The difficulty of procuring from your own agencies, not only an increase of supply, but even steadiness at the present amount, and the constantly increasing cost of production, are trust are at last prevailing upon you, to look to the coast as a source from which you may derive, with great advantage, a much larger proportion of your annual quantity than you have hitherto accepted from it. Our sentiments on this important point have been so often urged upon you on former occasions, that we shall not dwell upon them at present. It is necessary for us, however, to take notice of your decision respecting the proposal of Mr. Trotter, which you have communicated to us in your letter in this Department, dated 30th October 1828, paragraphs 218 and 219. We have received a Memorial from Mr. Trotter, who was then in England, upon the same subject, and will state to you in a few words, what has occurred to us respecting his proposal.

26. It is Mr. Trotter's opinion, and he appears to have bestowed a great deal of attention on the subject, that the Coromandel Salt might undergo a process of purification at Calcutta, which would adapt it perfectly to the Bengal market; that this article might always be supplied steadily, without dependence on the seasons or other cause of fluctuation; that it could be supplied at a less cost than the Salt manufactured at your own agencies; and that the quantity might be augmented to any extent which may be deemed expedient.

27. If these objects could be so obtained, it must be admitted that a great advantage would thence be derived to your Government. We think that you were perfectly justified, in fact it would have been imprudent to have done otherwise; in looking upon a new project of this nature with distrust, and in abstaining from any steps leading to its adoption, till you were convinced by satisfactory evidence that the results which it promised were likely to be realized. At the same time there is so much probability in the anticipations themselves, that the proposition deserved a full and deliberate investigation before it was thrown aside.

28. The Board of Customs, Salt and Opium, in forwarding to you the proposal of Mr. Trotter, stated certain reasons which appeared to them sufficient to justify its rejection. And upon these reasons of theirs you appear to have acted. The reasonings of the Board, however, are conjectural, as much as those of Mr. Trotter, and are but a weak foundation on which to rest a conclusion of any importance.

29. The Board take a favourable view, in our opinion one much too favourable, of the mode of providing your Salt by the present agencies. They next adduce some considerations to show that the cost of purification would be much greater than is stated by Mr. Trotter. We do not think that these considerations go far towards establishing the point; and they are directly met by the proposal of Messrs. Alexander and

and Co., to contract for the supply of a certain quantity of purified Salt at the rate mentioned by Mr. Trotter.

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30. The Board state that the cost of apparatus, and other requisites for making the experiment, would amount to a large sum. This undoubtedly is an important consideration. But the conjectural statement of the Board on this subject should not be taken as a proof of the fact. And, at all events, this objection does not apply to the full experiment which might be made through the contract with Messrs. Alexander and Co.

31. We are disposed to lay more stress upon the objections, also adduced by the Board, that coast Salt may be obtained in sufficient purity for the Bengal market, out undergoing the process of purification. If so, there is, of course, no motive for rejecting it to that process. To this opinion, from all the information we have received, we ourselves incline. But if such be the fact, it sets in a strong light the fault of your policy in so long and obstinately declining to avail yourselves of this great resource.

32. The prejudice which, according to the Board, the natives have to the use of purified Salt, we should not consider a formidable objection, because we think by proper means it might soon be overcome.

33. We are not prepared to pronounce an opinion, either in favour of Mr. Trotter's plan or in opposition to it; but the circumstances which are from time to time forced upon our attention, concur in convincing us, that the present system is of very arduous management; that vices prevail in it, which you have neither succeeded in removing, nor are likely to remove; and that the imperfections of it will in no long time compel you to think seriously of great alterations. We therefore conceive it to be of the very greatest importance that, in the mean time, you should be careful to explore the merits of any suggestion that may be presented to you. With this view, we transmit the Memorial of Mr. Trotter, the substance of which you have already had before you, with a most serious recommendation that it may receive a far more deliberate consideration than that which was formerly bestowed upon it; and that the experiment, unless it is finally thought by you to offer no reasonable prospect of success, and that it would involve an expense to Government exceeding the value of any probable advantage, should be made. We need not add, that if it be made, you should take all requisite security for its being fairly made; and to save it from any chance of being defeated in the hands either of prejudice or of adverse interest. Of your inquiries and experiments we desire that you will keep us continually apprized, as there is nothing to which we attach a higher importance than to the just and beneficial regulation of this branch of the revenue. We sincerely hope that, feeling with us upon this point, you will lose no time after the receipt of this Despatch in instituting a full and fair inquiry; and your exertions, we are sure, will be zealous and unremitting till such time as you shall have perfected a system more in consonance with our wishes, and with the beneficent policy we desire to make the rule of our Government.

EXTRACT<sup>N</sup> Letter in the Separate Department, from the Court of Directors, to the Governor-General in Council in Bengal, dated 23d February 1831.

Letter from the Governor-General in Council to the Court of Directors, dated 8th December 1829 (14 to 35). Correspondence with the Board of Customs, &c. respecting the supply of the mode the ensuing year, ministering the Salt.

Para. 6. On the first and more limited subject, the supply of the year, we have few observations to offer. You considered it the safest course to make no alteration in the existing mode, either of providing the article or vending it; deeming it however necessary, in consideration of the quantity on hand, to limit the amount of the

7. The correspondence of the Board is chiefly employed in establishing certain opinions which form the basis of the plan which they would recommend for the future administration of this branch of the revenue.

8. We shall first advert to a position of theirs which they had urged on a former occasion, viz. That the population supplied with Salt from the Calcutta sales consume as much as they have occasion for, and would not increase their consumption if the price were reduced. We offered some remarks on this supposition in our Despatch in this Department, dated 4th November 1829, to which we have not yet received your answer, and to which we again direct your attention.

9. It is stated in support of this opinion in the correspondence before us, that six seers of Salt is the annual consumption of one man; and that, according to the most probable estimate of the number of inhabitants, this quantity is actually supplied to each. This however does not appear to us to be sufficient. The Board may know that six seers only are consumed at the present price, but we distrust their inference, that more would not be consumed at a lower price.

10. As little satisfactory is their reference to the annual returns of golah clearances, to show that the increase of supply has kept pace with the increase of population. This has no tendency to prove that at every one of those dates the same population would not have taken off a greater quantity at a smaller price.

11. We admit, however, that doubt may be entertained whether reduction of price would be accompanied by a proportional increase of consumption. This can be determined only by experiment; and we agree that the experiment ought to be made cautiously by slight alterations at a time, either by a small reduction of the price, if the stores are opened at a fixed price, or by a small addition to the quantity sold, if the plan of periodical sales is persevered in. At the same time we are decidedly of opinion, that for so important an object as cheapening to the population so material an article of consumption, a risk of some temporary diminution of revenue might not improperly be incurred.

12. We do not think that it is evidence against the making of such an experiment, that the merchants, when the sales have been large, have been dilatory in making clearances from the golahs, and have left a quantity on hand till the succeeding year. It was obviously

obviously the interest of the merchants to keep up the retail price; and if they entertained the hope, that by reserving a portion of the supply of the present year, they should induce the Government to lessen the supply of the subsequent year so far as to keep up the price in that year to the same level at which they had retained it in the foregoing year, they were relieved from the apprehension of loss on account of the quantity remaining in store. If they had been well assured of your steady perseverance in keeping up the augmented supply, the dread of a still greater reduction of price in the second year would have prevented them from keeping back any portion of the supply of the first. We are of opinion, therefore, that the delay of the merchants in clearing the golahs is no proof that the market was incompetent to take off a greater quantity at a smaller price.

13. The arguments by which the Board dissuaded you from opening the golahs at a certain fixed price, and in this manner trying how much would be taken off for consumption under a slight reduction of price, an experiment which apparently would be attended with very little risk, appear to us likewise to require reconsideration.

14. They told you that "the departure from the established course must operate to derange in some degree the existing methods of supplying the interior, and hence would not be free from risk." This supposition appears to us to be groundless. The merchants now buy at your sales, and take the article out of your stores at such times, and in such quantities as suits their convenience for transmitting it into the interior. Their having it in their power to go to your stores and purchase the quantity which they need, at the time when they need it, does not appear to us to necessitate any derangement of the existing method of supplying the interior.

15. They further assured you, "that under the necessity of clearing Salt actually purchased, there would be a stimulus for carrying the article into the interior, which not being felt under the assurance of always being able to obtain it when wanted for a speculation, would operate to make the plan of fixed sales more favourable for the consumer than that of the fixed prices; besides that the former was in many respects more favourable to the revenue." We think that these inferences are too hastily drawn. The stimulus for carrying the article into the interior, is in all cases the profit to be made by the transaction. The necessity of clearing the Salt purchased at the sales cannot have the effect ascribed to it, because practically it has no operation, it being one of the statements of the Board that the clearances are not made. One of the effects indeed which it seems reasonable to anticipate from keeping the golahs open for the supply at all times of all demands, is that of a regular supply to the consumer; because, in that case, every person, without exception, can send Salt into the interior, whenever the profit is such as to afford him the inducement; whereas, when a few merchants at your fixed sales take off in large purchases the whole quantity sold, they can afterwards, by withholding supply, exercise for their own advantage a great degree of control over the price. That the selling at a fixed price should be more unfavourable to the revenue, if the quantity sold and the price at which it is sold are the same, is impossible. If the price is lowered by Government, on purpose that the experiment may be tried whether the lowness of price will not be compensated by increase of consumption, that is the Go-

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vernment's own act, the consequences of which it is willing to try ; consequences wholly distinct from those of a difference in the mode of conducting the Government sales.

16. The Board give it as their opinion that the tax on Salt, as now paid by the people, is little felt. Inferences of this sort, however, should be very cautiously admitted. The sum paid by each individual is indeed inconsiderable, but when we compare it with the small amount of the earnings of a poor ryot, the proportion does not appear to be small.

17. The plan recommended by the Board, on the strength of these arguments, is, that a quantity of Salt, to the extent of 45 or 46 lacs of maunds, and not more, should be disposed of at periodical sales in each year, and that of this no more than six lacs of maunds should consist of Salt from Madras. On the first of these propositions you did not think it necessary for you to come to an immediate decision, further than related to the question of the present year ; but you concurred with the Board in their view of the permanent limit which should be applied to the amount received from the coast, though the Madras Government stated strongly their opinion that, with a view to the interests of both Presidencies, not less than eight lacs ought to be steadily supplied.

18. In addition to what is urged above, as grounds of doubt respecting the conclusion of the Board that 46 lacs of maunds is an adequate supply, we may still observe that though it is stated by the Board that, on the average of twenty years, the quantity of Salt cleared from the golahs and carried into the interior amounted to about 45½ lacs of maunds, it appears by the table you have transmitted in your Letter, that in the first ten years of this period, the average quantity consumed in the provinces intended to be supplied with your Salt amounted to 44,20,114, and in the last ten years to 47,88,230 ; in the last four years to 47,66,983.

19. Upon a general view of the quantities, it is evident that the consumption may be considered to be progressive, and that the quantity of 47½ lacs of maunds may be considered as that which, at the present time, may be expected to be sold without any diminution of price.

20. A yet more conclusive opinion may be formed upon this point if the prices in these three periods be attended to.

21. In the first period the average price was 334 rupees the 100 maunds ; in the second, 377 ; in the third, in which the quantity sold was rather below the average of the ten last years, the price rose to 399 rupees, thus showing a steady demand on the part of the consumer at an increased price ; the average quantity sold in the last four years, producing at the average price of those years 1,90,20,262 rupees, and the average quantity of the ten years at the price of those years, 1,80,51,627.

22. We have no intention to urge upon you the adoption of any views of ours, because we are satisfied that you have better means of arriving at an accurate conclusion than we have ; and our only desire is, that you should carefully and impartially exercise your own judgment. We have offered such observations on the arguments of the Board as we thought might deserve your consideration ; and we trust that you will always scrupulously examine for yourselves the reasons which are offered to you by subordinate authorities ; knowing that it is your peculiar duty to check the biases to which they may be liable.

23. The

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23. The object of the regulation is two-fold ; first, to equalize the duty on the importation of Salt into the Western Provinces, and slightly to increase it, the duty on its consumption being at the same time repealed ; and, secondly, to impose an additional duty upon its importation into the Province of Benares. We are in hopes that the first of these measures will not be injurious to the revenue, while it will certainly relieve the consumer from a duty of a vexatious nature.

(36 to 41.) Correspondence relative to the design of increasing the rate of duty on Salt in the Western Provinces, including Benares, and a Regulation to that effect enacted

24. Though in the province to which the second measure extends the tax upon Salt was lower than in those supplied from the Calcutta sales, we believe that the population there was at least as highly taxed, in the proportion to its means, as the population of the other provinces ; and if so, it may be found that even your exchequer may not be benefited by the imposition of a new duty.

25. As the measure has been some time in operation, we shall content ourselves for the present with desiring you to transmit to us full information respecting the effects which may have been produced by it ; that we may know, not merely how it has affected the revenue, either as to amount or the difficulty of realizing it, but still more particularly how it has affected both the circumstances and the sentiments of the people.

26. The impost does not clearly appear to be included in the class of duties which require for their enactment the consent of the home authorities ; but as the question is not free from doubt, we think it advisable to announce the prescribed form ; and do hereby, with the approbation of the Commissioners for the Affairs of India, sanction and approve the regulation entitled, " A Regulation for increasing the rates of duty on Western Salts imported into or in transit through the ceded and conquered provinces, for levying a further duty on those Salts on their entering the province of Benares, and for remitting the town duty leviable under the existing regulations on Western Salts imported for consumption into the city of Benares, and towns of Mirzapore and Ghazepore."

No. 26.

LETTER, in the Separate Department, from the Governor-General in Council in Bengal to the Court of Directors, &c. &c. &c. ; dated the 8th of December 1829.

Honourable Sirs :

Our last Letter to your Honourable Court, in this Department, was dated the 7th July last.

2. Our proceedings in the Salt department have lately assumed an importance which entitles your Honourable Court to expect that we should separately report to you on the subject of them. The orders and observations contained in the Letter of your Honourable Court in this Department, dated 10th June last, Paras. 34—43, and *passim*, render it more necessary that we should not longer delay this communication.

3. Your Honourable Court is aware that, towards the end of each year, the Board of Customs, Salt and Opium, report to us ordinarily on the arrangements to be made for the supply of Salt in the following year, with reference in particular to the requisitions for



## 1000 FOURTH APPENDIX TO THE THIRD REPORT OF THE

this article to be made from the coast. In our Letters, dated 12th September 1828, dispatched by the private ship Victory, paras. 3 to 7, we referred your Honourable Court to our proceedings in respect to the Report of the Board relative to the supply of Salt for 1828. On that occasion we discussed with the Board, at some length, the prospects of its department, and the practicability of extending the supply for consumption without injury to the revenue derived by Government from Salt. We had hoped that by drawing your attention in this manner to the views we proposed then to act upon, we had complied with the wishes heretofore conveyed to us by your Honourable Court, to be put in possession of our sentiments on this subject; but we regret to observe from the tenor of the observations in the Letter above acknowledged, which bears a date posterior to the receipt of our Despatch of September 1828, that you were not satisfied with the information and explanations furnished by us.

4. We hasten, therefore, to supply the further more complete information, which our subsequent correspondence with the Board of Customs, Salt and Opium, on this important subject will be found to have elicited; but it will be necessary that we should, in the first instance, notice that the statement assumed in para. 42, of your Letter of the 10th June last as the basis of reasoning in regard to the annual revenue and the annual supply of Salt, is taken from accounts which do not afford, and never were intended to afford, data for such calculations.

5. An examination of the items included in these statements will show that they exhibit the commercial out-turn of the *manufacture* of each year at the Bengal agencies, with the out-turn of as much Cuttack, Coast, and other imported Salt, as may be brought to sale in a different year from that of manufacture, *viz.* from the 1st of May to the 30th of April following; and so with the quantity sold in retail, which is exhibited for the same twelve months of account. The season of manufacture commences, as your Honourable Court is well aware, in the month of December, and continues until the end of May. The agency Salt of the season is generally first brought to sale in the month of March, and the whole of it will ordinarily be sold by the March or April following; the year's produce, however, though spread over the sales of a period of fourteen months, and sometimes more, appears entire in the annual account, the object being to exhibit a commercial balance on the operations of the year of manufacture, with a view to calculation of the agent's commission earned thereby, rather than for any purpose connected with the revenue of a given period, or to show the quantity of the article provided and given out for consumption in that space of time. The consequence is, that if the manufacture is productive, and the season favourable, a large quantity of agency Salt will appear in these annual accounts.

If, again, the produce has been short, there will be little shown; but it must not thence be concluded that more was provided for the consumer in the period comprehended in the former statement than in the latter; for its deficiency will, nay must, have been supplied either by Salt of the preceding year, sold in the early months, March and April, and already included in the previous year's account, or by Salt of the following year, sold in the later months, and not brought to account till the following year, because not of the same season's manufacture.

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6. As much fallacious reasoning has been built upon the assumption that these statements exhibit the annual supply for consumption and the annual revenue, whereas, for the reason above stated, they do neither, we deem it necessary to submit the following analysis of the items cited by your Honourable Court, which were as follows:

Salt.

	Maunds.	Net Profit.
1821-22 .. .. .	53,79,524	1,49,07,387
1822-23 .. .. .	49,24,875	1,53,47,049
1823-24 .. .. .	50,57,447	1,29,47,397
1824-25 .. .. .	51,62,009	1,13,67,285
1825-26 .. .. .	46,13,516	1,13,46,825

Now these items analyzed, stand as follows:

	Quantity of Salt.	TOTAL.	Net Profit.	TOTAL.
1821-22:				
Agency Salt of 1827 manufacture, sold in six sales of 13 months, March to March	40,82,733	—	1,13,83,983	
Imported Salt at Sulkea, viz. Cuttack, Madras, Permit, Bombay, and Rock Salt; also 9,302 maunds of confiscated Salt, sold between the 1st May 1821 and 30th April 1822 .. .. .	10,49,560	—	27,71,693	
Salt sold by retail in Cuttack, between 1st May 1821 and 30th April 1822	2,47,225	—	3,35,925	
		53,79,524		1,44,91,602
Deduct French Convention in money .. .. .	—	—	—	3,04,215
				1,40,97,387
1822-23:				
Agency Salt of 1828, sold from March 1822 to April 1823, 14 months	35,77,381	—	1,18,06,550	
Sulkea imported and confiscated Salt, sold from 1st May 1822 to 30th April 1823 .. .. .	10,64,212	—		
Cuttack retail Salt, sold from May to April, ditto .. .. .	2,83,282	—		
		49,24,875		1,51,87,476
Add amount-penalty received from Salt Merchants, after deducting Convention to French Government .. .. .	—	—	—	1,59,573
				1,53,47,049
1823-24:				
Agency Salt of 1829, sold from March 1823 to April 1824, 14 months .. .. .	36,54,485	—	1,04,83,777	
Sulkea imported and confiscated Salt, sold from 1st May 1823 to 30th April 1824 .. .. .	11,67,734	—	26,71,185	
Salt sold by retail, in Cuttack, from May 1823 to April 1824 .. .. .	2,35,228	—	2,45,490	
		50,57,447		1,33,69,452
Deduct paid to French Government as per Convention, and premium to Salt Merchants .. .. .	—	—	—	4,22,055
				1,29,47,397

(continued.)

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(continued.)

Salt.

	Quantity of Salt.	TOTAL.	Net Profit.	TOTAL.
1824-25:				
Agency Salt of 1830, sold from March to December 1824 ..	35,58,127	—	89,26,223	
Sulkea imported and confiscated Salt, sold from May 1824 to April 1825 ..	13,10,763	—	26,73,443	
Salt sold by retail in Cuttack, from May 1824 to April 1825 ..	2,93,119	—	2,99,601	
		51,62,009		1,18,99,267
Deduct paid to French and Danish Governments on account of Con- vention, and also the amount awarded in mitigation of penalty	—	—	—	5,31,941
				1,13,67,326
1825-26:				
Agency Salt of 1831, sold from March 1825 to April 1826 ..	26,23,359	—	76,65,714	
Sulkea imported and confiscated Salt, sold from May to ditto ..	16,26,513	—	35,91,105	
Salt sold by retail in Cuttack, from May 1825 to April 1826 ..	3,63,644	—	3,35,993	
		46,13,516		1,18,92,812
Deduct paid to French and Danish Governments on account of Con- vention, and for Salt destroyed by hurricane .. ..	—	—	—	5,45,987
				1,13,46,825

7. From the above statement your Honourable Court will observe, that the variation of quantity depends mainly on the quantity of agency Salt brought into the account; in other words, on the productiveness of the manufacture of the year. The following further detail for the first and last years of the statement which exhibit the extremes in respect to quantity, will explain the manner in which the apparently deficient supply of the last year was made up to the consumer; for it is a remarkable circumstance that these two years, compared with reference to the quantity of Salt advertised for sale, and actually sold in them respectively, exhibit a result the direct reverse of that on which your Honourable Court have argued. The quantity of Salt sold in 1821-22, that is, between the 1st of May of 1821 and the 30th of April 1822, was only 47,00,000; whereas, in the same period of 1825-6, there were 50 lacs of maunds sold, as will be seen noted in the statement:

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1821-22.	AGENCY SALT OF			Imported Salt and Confiscated.	TOTAL Advertised Amount.	Salt.
	1826.	1827.	1828.			
Salt Sale of March 1821..	1,08,000	7,92,000	—	2,00,000	11,00,000	Last Sale of the year of account, 1820-21.
Ditto .. May ..	—	9,30,252	—	2,69,748	12,00,000	
Ditto .. July ..	—	10,00,347	—	1,99,653	12,00,000	
Ditto .. Sept. ..	—	5,40,000	—	1,60,000	7,00,000	
Ditto .. Dec. ..	—	4,98,044	—	2,01,956	7,00,000	
Ditto .. March 1822	—	3,07,558	3,91,769	2,00,673	9,00,000	
* Add sold to the French, with small retail Sale at Tuplook, Bullooh, and Chittagong .. ..		40,68,201	* and loss by accident }	17,222	47,00,000	
		14,531	Marine and Isle of France }	314		
		40,83,732		10,49,566		

\* These small items are added to balance the Account, and make the items correspond with the previous Statement.

8. From the above statement it will be seen that the March sale of 1821, which did not enter into the period of account by which the imported Salt of the year is calculated, contributed no less a quantity than 7,92,000 maunds towards the aggregate of agency Salt included in the item quoted by your Honourable Court, because that quantity of the year's manufacture was then sold, the remnant of the preceding year's produce 1,08,000 maunds, which, with two lacs of imported Salt, made up the sale allotment of March 1821, 11 lacs had been brought to account in the preceding year, as belonging thereto.\* Again, in the sale of March 1822, the manufacture having been favourable, the remnant of 1827 Salt for sale was 3,07,558 maunds, to which only 3,91,769 of the following year's produce required to be added to complete the sale allotment; but this latter quantity, like the 7,92,000, of the preceding March, remained to be carried to account with the rest of the produce of the same year, in the next annual statement of profit realized.

9. In 1825-26, 50 lacs of maunds were, as above stated, advertised to be sold in monthly sales; that is, in 12 sales from the 1st May 1825, to the 30th April; but the Salt of 1831 was brought forward at the two preceding sales of March and April 1825. The result of these two months have therefore been included, in order to show the distribution of the year's produce, which, from inundation and unfavourable weather, was only maunds 26,23,359. On the other hand, the proportion of Salt taken from the production

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duction of the following year to make up the allotments of the last sales of the year (1825-6), is excluded from the statement, and remains for that of the following year, when the operations of the Salt season 1232 might be under review.

1825-26.				AGENCY SALT.			SULKEA Imported and Confiscated.	TOTAL of each SALE.
				SALT OF 1230.	SALT OF 1231.	SALT OF 1232.		
Salt sale of March ... 1825	..	..	..	none re- maining. }	3,59,726	—	40,274	4,00,000
Ditto .. April .. ..	..	..	..	—	2,80,000	—	1,20,000	4,00,000
Ditto .. May .. ..	..	..	..	—	2,50,000	—	4,50,000	4,00,000
Ditto .. June .. ..	..	..	..	—	2,79,198	—	2,20,802	4,00,000
Ditto .. July .. ..	..	..	..	—	2,75,000	—	2,25,000	4,00,000
Ditto .. August .. ..	..	..	..	—	3,36,777	—	63,223	4,00,000
Ditto .. September .. ..	..	..	..	—	2,55,000	—	1,45,000	4,00,000
Ditto .. October .. ..	..	..	..	—	1,99,736	—	2,00,264	4,00,000
Ditto .. November .. ..	..	..	..	—	2,18,000	—	1,82,000	4,00,000
Ditto .. December .. ..	..	..	..	—	1,10,400	1,66,000	2,23,600	4,00,000
Ditto .. January .. 1826	..	..	..	—	4,000	2,62,000	1,34,000	4,00,000
Ditto .. February .. ..	..	..	..	—	1,000	2,55,000	1,44,000	4,00,000
Ditto .. March .. ..	..	..	..	—	14,664	2,84,897	1,00,439	4,00,000
Ditto .. April .. ..	..	..	..	—	18,034	2,50,999	1,30,967	4,00,000
					26,01,136	12,18,896	18,19,295	50,00,000
						Add Transfer..	4,348	
						Deduct trans- ferred in ac- count agency Salt being de- livered instead deficiency in- cluded ..	18,23,643	
					22,224		1,97,130	
					26,23,359		16,26,513	

Add sales to French, and  
small retails as above }

10. The transfer deducted from the quantity of Sulkea Salt was mainly an exchange made on the application of the merchants of agency for coast Salt on their paying the difference of price. The agency Salt given was of course of the season 1823, so as not to fall within the account of this year. That of the following season was, however, proportionably enhanced. We take this occasion to refer your Honourable Court to the result of the two years following, 1825-6, which unless the manner in which the statements are prepared were understood, might justify our citing them as affording triumphant proof of the prosperous condition into which this item of revenue had subsequently been brought.

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	Mds.	Mds.	Rs.	
1826-27 :				
Agency Salt of 1232, sold from December 1825 to April 1826, 17 months .. }	33,51,141	—	1,05,20,46	
Sulkea Salt, viz. Cuttack, Madras, Permit, Rock. Mocha and confiscated Salt, sold from May 1825 to April 1826 .. }	16,67,956	—	48,28,325	
Salt sold by retail in Cuttack, from ditto to ditto .. .. . }	3,38,974	—	2,79,827	
		53,58,071		
Deduct paid to French and Danish Governments, on account of convention, &c. .. .. }	—	—	—	4,94,753
			Sa. Rs.	1,51,26,866
1827-28 :				
Agency Salt of 1233, sold from March 1826 to April 1827, 14 months .. }	38,64,572	—	1,24,04,884	
Sulkea Salt, viz. Cuttack, Coast and confiscated Salt, sold from May 1826 to April 1827 .. .. . }	20,49,275	—	59,14,258	
Salt sold by retail in Cuttack, from ditto to ditto .. .. . }	2,84,666	—	2,00,031	
		61,98,513		1,86,09,173
Deduct paid to French and Danish Governments, on account of Convention, &c. .. .. }	—	—	—	3,30,988
			Sa. Rs.	1,82,78,185

11. In reply to the Letter of the Board forwarding the results for the year 1827-28, we pointed out that these statements afforded no just criterion either of the quantity of Salt given out for consumption, or of the revenue realized in a given period. We hope we have made the causes of this intelligible to your Honourable Court.

12. Since, however, it is of the utmost importance that, in considering a subject of this nature, the facts which are to form the basis of argument should be clearly set forth, we hope to be excused for anticipating the review of our proceedings about to be submitted, so far as to include the following statement, which formed an enclosure in a Letter from the Board, dated 9th July last,\* and was prepared with the specific object of showing how the consumption of the country had been supplied since the first establishment of the present system of management for this item of revenue. We beg to refer to it, as exhibiting the only correct data upon which any conclusion can be drawn as to whether the population have been adequately supplied with Salt, or the contrary, at any given period. and as it was prepared from the Gold returns with great care, we have no reason whatsoever to doubt its accuracy.

STATEMENT

\* Separate Consultations, August 25, 1829. No. 10.

# 1006 FOURTH APPENDIX TO THE THIRD REPORT OF THE

## STATEMENT of the Consumption of SALT in Bengal,

YEAR.	Salt sold, but remaining uncleared in the Golha on 31st January of preceding year.	Quantity of Salt Sold by Public Auction in the Year.	Total Quantity of Salt available, and which it rested with the Purchasers to clear.	Quantity of Salt Consumed in those Provinces which were with the Honourable Company's Salt				
				Salt cleared out of the Honourable Company's Golha.	Retail Sales at			Salt supplied to the French Government.
					TUMLOOK.	JESSORE.	BULLOOAH.	
	1.	2.	3.	4.	5.	6.	7.	8.
1790 ..	—	31,09,000	31,09,000	31,09,000	—	—	—	—
1791 ..	—	30,15,735	30,15,735	30,15,735	—	—	—	—
1792 ..	—	32,50,000	32,50,000	32,50,000	—	—	—	—
1793 ..	—	35,66,231	35,66,231	35,66,231	—	—	—	—
1794 ..	—	34,00,000	34,00,000	30,20,967	—	—	—	—
1795 ..	3,79,033	36,00,000	39,79,033	57,77,957	—	—	—	—
1796 ..	2,01,076	36,00,000	38,01,076	34,29,774	—	—	—	—
1797 ..	3,71,302	33,50,000	37,21,302	35,09,137	—	—	—	—
1798 ..	2,12,165	34,00,000	36,12,165	32,34,662	—	—	—	—
1799 ..	3,77,503	34,00,000	37,77,503	32,27,693	—	—	—	—
1800 ..	5,49,810	34,00,000	39,49,810	32,44,945	—	—	—	—
1801 ..	7,04,865	30,00,000	37,04,865	33,56,420	—	—	—	—
1802 ..	3,48,445	35,00,000	38,48,445	35,20,302	—	—	—	—
1803 ..	3,28,143	39,00,000	42,28,143	37,96,662	—	—	—	—
1804 ..	4,31,481	40,00,000	44,31,481	38,90,900	—	—	—	—
1805 ..	5,40,581	41,00,000	46,40,581	42,07,181	—	—	—	—
1806 ..	4,33,400	42,00,000	46,33,400	41,55,178	—	—	—	—
1807 ..	4,78,222	43,00,000	47,78,222	44,86,514	—	—	—	—
1808 ..	2,91,708	44,00,000	46,91,708	42,22,250	—	—	—	—
1809 ..	4,69,458	44,00,000	48,69,458	42,41,974	—	—	—	—
1810 ..	6,27,484	45,00,000	51,27,484	44,21,117	—	—	1,275	—
1811 ..	7,06,367	43,00,000	50,06,367	43,01,183	—	—	611	—
1812 ..	7,05,184	46,00,000	53,05,184	45,50,298	—	—	678	—
1813 ..	7,54,886	46,00,000	53,54,886	43,63,683	—	—	40	—
1814 ..	9,91,203	44,00,000	53,91,203	43,12,741	—	—	10	—
1815 ..	10,78,462	42,00,000	52,78,462	43,81,996	—	—	1,200	—
1816 ..	8,96,466	45,00,000	53,96,466	46,26,578	50	—	25	—
1817 ..	7,69,888	44,00,000	51,69,888	43,31,863	500	—	1,150	—
1818 ..	8,38,025	47,00,000	55,38,025	46,41,102	100	—	975	12,000
1819 ..	8,96,923	48,00,000	56,96,923	49,48,129	150	—	651	12,000
1820 ..	7,48,794	49,00,000	56,48,794	46,22,279	50	—	187	—
1821 ..	10,26,515	49,00,000	59,26,515	46,38,392	25	—	646	12,000
1822 ..	12,88,123	46,00,000	58,88,123	45,91,678	150	—	2,527	12,000
1823 ..	12,96,445	50,00,000	62,96,445	47,57,391	200	—	736	12,000
1824 ..	15,39,954	50,00,000	65,39,954	51,34,460	200	—	720	9,000
1825 ..	14,04,594	50,00,000	64,04,594	48,64,030	300	283	1,860	9,000
1826 ..	15,40,564	47,00,000	62,40,564	45,01,716	100	3,423	14,278	12,000
1827 ..	17,38,848	47,00,000	64,38,848	51,12,709	50	9,546	17,291	12,000
1828 ..	13,26,139	46,00,000	59,26,139	44,49,506	50	1,319	7,729	12,000

# SELECT COMMITTEE OF THE HOUSE OF COMMONS.

1007

Behar and Orissa, from 1790 to 1828, both Years inclusive.

intended to be supplied in 1790.		Quinquennial and Annual Average Increase in the Supply.	Average Price per 100 Maunds Salt, sold at the Honourable Company's Sale.	Retail Sale of Salt at Reduced Prices.			TOTAL SUPPLY of LICIT SALT of every Description to the Inhabitants of those Provinces, the Consumption of which intended to be provided by the Monopoly.	YEAR
Quantity of Salt Imported on which Custom Duties were paid.	TOTAL.			In Cuttack, when that Province was added to those intended to be supplied with Company's Salt in 1790.	At Chittagong, in consequence of the Abolition of a Local Manufacture.	TOTAL.		
9.	10.	11.	12.	13.	14.	15.	16.	
—	31,09,000	—	£. s. d. 243 7 3	—	—	—	31,09,000	1790
—	30,15,735	—	216 4 10	—	—	—	30,15,735	1791
—	32,50,000	—	288 4 2	—	—	—	32,52,000	1792
—	35,66,231	—	302 7 4	—	—	—	35,66,231	1793
—	30,20,967	—	301 12 2	—	—	—	30,20,967	1794
—	37,77,957	Quinquennial 12,17,290	287 4 9	—	1,029	1,029	37,78,986	1795
—	34,29,774		202 1 11	—	816	816	34,30,590	1796
—	35,09,137		300 4 7	—	1,000	1,000	35,10,137	1797
—	32,34,662	Annual 2,43,458	327 10 0	—	658	658	32,35,320	1798
—	32,27,693		314 4 3	—	—	—	32,27,693	1799
—	32,44,945		257 10 10	—	510	510	32,45,455	1800
—	35,56,420	Quinquennial 6,30,006	281 7 4	—	1,000	1,000	33,57,420	1801
—	35,20,302		370 6 0	—	1,402	1,402	35,21,704	1802
—	37,96,662		420 6 10	—	1,028	1,028	37,97,690	1803
—	38,90,900	Annual 1,26,001	354 4 3	—	1,200	1,200	38,92,100	1804
—	42,07,181		323 5 3	—	1,200	1,200	42,08,381	1805
—	41,55,178		321 11 10	1,42,442	1,200	1,43,642	42,98,820	1806
—	44,86,514	Annual 7,00,773	362 12 11	91,744	1,202	92,946	45,79,460	1807
—	42,22,250		374 0 10	1,15,550	1,060	1,16,610	43,38,860	1808
—	42,41,974		331 0 10	1,14,373	1,175	1,15,548	43,57,522	1809
—	44,22,392	Quinquennial 6,38,536	335 12 8	1,17,514	—	1,17,514	45,39,906	1810
—	43,11,794		349 2 4	87,987	1,000	88,987	43,90,781	1811
—	45,50,976		331 5 9	1,35,212	1,225	1,36,437	46,87,413	1812
—	43,63,720	Annual 1,27,707	326 1 11	1,37,470	1,773	1,39,243	45,02,963	1813
—	43,12,751		306 11 10	1,49,539	1,210	1,50,749	44,63,500	1814
—	43,83,196		312 9 10	1,70,008	940	1,70,948	45,54,144	1815
—	46,26,653	Quinquennial 10,31,388	326 3 9	1,32,777	1,235	1,34,012	47,60,665	1816
—	43,33,513		321 1 0	1,26,497	1,165	1,27,662	44,61,175	1817
—	46,54,177		341 0 10	2,16,405	906	2,17,311	48,71,488	1818
24,652	49,84,582	Quinquennial 8,46,717	329 1 5	2,54,508	890	2,55,398	52,39,980	1819
13,740	46,35,256		333 11 2	2,51,986	977	2,52,963	48,88,219	1820
976	46,51,999		358 2 6	2,47,224	1,859	2,49,083	49,01,082	1821
11,889	46,18,244	Annual 1,69,343	418 15 4	2,76,026	1,066	2,77,092	48,95,336	1822
6,061	47,76,388		325 2 3	2,35,227	1,069	2,36,296	50,12,684	1823
3,518	51,47,898		352 13 11	2,66,031	1,890	2,67,921	54,45,819	1824
19,087	48,94,560	Annual Increase 1,036	391 11 1	3,64,119	10,380	3,74,499	52,69,059	1825
9,117	45,49,634		410 11 11	3,38,973	36,036	3,75,009	49,15,643	1826
—	51,51,598		415 3 1	2,84,664	87,974	3,72,638	55,24,236	1827
10,538	44,81,142	Average p' An. 47,66,982	379 1 3	2,77,700	58,838	3,36,538	48,17,680	1828



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13. We do not mean in this place to draw attention to the facts established by this Statement; we have introduced it mainly for correction of the view taken by your Honourable Court, as to the state of the supply for consumption, arguing from the number of maunds upon which the annual account of profit was made up.

14. It is time, however, to place before your Honourable Court the correspondence we have alluded to above, as having taken place with the Board of Customs, Salt and Opium, on the subject of the future management of this branch of revenue.

15. In submitting, for our orders, their report on the arrangements to be made for plying Salt, and for conducting the sales of the year 1829,\* the Board renewed discussion commenced in the report of the preceding year, to which we have above referred.

16. The questions agitated by the Board on this occasion, and submitted for our determination, were the following :

First. The extent of supply required for the year's consumption of Bengal and Behar, and the quantity to be provided with reference to the wants of the population on one hand, and to the necessity, on the other, of maintaining the revenue :

Secondly. Whether both objects could best be accomplished under the plan of annual allotment for sale at prices regulated by open competition, Government fixing the quantity to be exposed to sale, or by Government fixing a price and opening the golahs to the public to take as much off at that price as the wants of the population might require :

Thirdly. Supposing the plan of fixed annual sales to be adhered to, how many should be made in the year, and at what periods :

Fourthly. An alteration was proposed in the form of the order to be delivered to a purchaser, on payment for his lot, whereby the order would become a negotiable security in law, which it was not before ; and a condition was proposed to be added, that objections to the quality of the Salt should not be received after a year :

Fifthly. The Board submitted the necessity of limiting and restricting the supply of the coming year, which, through the productiveness of the past season, threatened to be excessive.

17. Our reply discussed each of these points separately.† We admitted the truth of the Board's remark, that the sales were not so good a criterion of the quantity required by the regulation, as the aggregate quantity cleared from the golahs and carried into the interior. Upon an average of twenty years, this last criterion showed a consumption of about 45½ lacs of maunds per annum ; while the quantity sold averaged nearly a lac in excess of the clearances. Building on this fact, joined to an estimate of the population, and of the consumption per head for the tract within which Salt of the Calcutta sales is consumed, the Board of Customs, Salt and Opium, assumed that after the large clearance made in 1827-28, consequent upon the payment of a premium on exportation, with other measures taken in the course of the year, having a tendency to force the clearances, a larger

\* Separate Consultations, November 26, 1828. No. 4 to 6.

† Separate Consultations, November 21, 1828. No. 7.

larger quantity than 45 lacs of maunds could not be required for purposes of human consumption, and that if more were offered in the year, a glut would be the consequence, attended with a fall of price most injurious to the revenue.

Salt.

18. However unwilling to have recourse to measures directed to a diminution of the supply of this necessary of life for the purpose of upholding the revenue, we were compelled to admit that the reasoning and facts offered by the Board afforded grounds to apprehend that an extension of the supply beyond the quantity stated would be hazardous to the revenue. In the present state, therefore, of the public finances, dependent as the Government was on the productiveness of this branch of its resources, we conceived it would be imprudent to adopt any basis of calculation for the measures of the coming year that might not offer security in this respect.

19. We approved, therefore, the recommendation of the Board that 45 lacs should be assumed as the probable want of consumption in the year, conceiving ground to have been shown for concluding that if the plan of prompt clearance after public sale, and no cancelling of purchases were acted upon, it would not be safe to throw a larger quantity into the market.

20. Upon the assumption that 45 lacs was all that could be taken off, the question that next arose was, whether it would be more beneficial to allow this to find its way into the interior by fixing a price, on payment of which any dealer should be entitled at any time to receive Salt in any quantity, or to sell the quantity so assumed to be sufficient, as heretofore. Doubtless, as observed by the Board, the season was favourable for trying the experiment of a fixed price, for the quantity in store was so large as to preclude the possibility of the whole being bought up for the purpose of establishing a sub-monopoly. Nevertheless, we were of opinion that the departure from the established course, as it must operate to derange in some degree the existing methods of supplying the interior, would not be free from risk, and there was reason to believe that under the knowledge of the necessity of clearing Salt actually purchased, there would be a stimulus for carrying the article into the interior, which not being felt under the assurance of always being able to obtain it when wanted for a speculation, would operate to make the plan of fixed sales more favourable for the consumer than that of fixed prices; besides that the former was in many respects more favourable to the revenue. On the whole, therefore, although we should be very desirous of giving to the plan of a fixed price a fair trial if the circumstances of Government would allow of the experiment, we resolved that at the period we speak of, and we think the same of the present time, it would have been injudicious to make any deviation from the usual mode of conducting the business of the departments. The quantity of Salt therefore to be offered for sale we restricted to 45 lacs, and the Board were directed to advertise and bring it to Sale as heretofore.

21. The Board recommended, with a view to give certainty to the speculations of purchasers, that only six sales should be made in the year, but we were not quite satisfied with the grounds of this recommendation. The difficulties experienced in the course of the year then passing were not so much ascribable to the number of sales as to their being equal, and not arranged so as to suit the most favourable periods of communication between the interior and the golahs, where the Salt sold was in store. Under a more judicious

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judicious allotment for sale, varying according to the average clearances of past years from the golahs of the different tracts of country, we were inclined to think the plan of monthly sales the most beneficial, as well to the public as to Government. The board were therefore desired to alter the advertisement in this respect, and both to apportion the quantities and fix the places on the principle above explained.

22. The explanation of the Board as to the disadvantage of leaving the negotiability of the Salt orders in doubt, satisfied us of the propriety of the proposed change on that head. The advantage drawn in the prosecution of those concerned in the late frauds, from the form heretofore in use not being assignable in terms, afforded no reason for continuing it; for, as observed by the Board, those committing frauds hereafter, being aware of the circumstance, would guard against the consequence.

23. With respect to the condition proposed to be inserted, that lots should not be rejected on the pretence of inferior quality, unless the objection were made within a year, there could be no reason for not publishing the condition; but unless each lot was separately stored in the golahs, which was of course out of the question, there would, we thought, be difficulty in its application. The better way of meeting this difficulty appeared to be, to add a proviso that the objection should not be listened to after a year, "provided that merchantable Salt of any kind were tendered." In the existing abundance of the article, no difficulty could be anticipated in fulfilling such a condition, while it would prevent the cancelling of a sale, and thus withholding the article from the consumers; the point, however, was left to be arranged according to the Board's discretion.

24. On the fifth and last point we found some difficulty in coming to a distinct conclusion. It appeared evident that if a manufacture at the agencies and in Cuttack, at all approaching that of the past season, could be reckoned upon for a constancy, the supply from these sources only would equal if not exceed the demand for consumption, and the necessity of any importation from the coast, or from other quarters, would altogether cease. This trade, however, had nourished and given encouragement to a most useful class of speculators, natives of the country and others, who, bringing up Salt, carry back rice and other cheap produce of Bengal, to the manifest advantage of both provinces.

25. The measures proposed by the Board for restricting the manufacture as much as could conveniently be done at the most expensive aurungs of the several agencies, and for limiting the importation from Cuttack in the coming year, were entirely approved. Before, however, finally determining on the course to be adopted in respect to the imported Salt, we deemed it indispensable to consult the Madras Government, in order that it might be ascertained, by reference to the local officers and other well-informed sources, what was the lowest limit that could be fixed for the importation of Coast Salt, without inflicting serious injury on the classes of traders engaged in the transport, who, having been encouraged by the practice of successive years to hope for a regular demand for their shipping through the supply of the article to this Presidency, were entitled to indulgent consideration. Upon this point, therefore, we stated that the final determination of Government would hereafter be communicated to the Board. We shall presently recur to the subject.

26. In conformity with these principles, we approved the advertisement for the sales of the year, with reservation to the two points referred to the Board for reconsideration.

27. The

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27. The Madras Government, to whom we immediately made a reference with a view to learn their sentiments as to the limit that might expediently be put on the exportation of Salt from the coast, replied in a Letter from their Secretary, dated 9th June last, recorded as per margin,\* giving cover to a Report from the Board of Revenue at that Presidency on the subject. After strongly representing the injury all the classes engaged, either in the manufacture or transport of the article, must suffer by a suspension of the trade, the Governor in Council submitted that if a limitation of the import in Bengal were indispensable, the minimum quantity should not be fixed lower than eight and a half lacs of Bengal maunds. We forwarded this Letter and its enclosures to the Board of Customs, Salt and Opium, desiring to learn their sentiments on the proposition of the Madras Government.

28. In the Letters from the Board, dated 9th July and 15th of August last, will be found their further sentiments on the several questions adverted to above.† In these Letters, the state and prospects of the Salt revenue were again fully entered into, and the points in regard to which the information before submitted was defective, were investigated and set before us, with a body of evidence to which we felt it to be very difficult to refuse credence.

29. The points argued in the first cited Letter were the following :—

First. That the tract of country supplied with Salt from the Calcutta sales having been the same uniformly from the date of the establishment of the monopoly to the present day, had been always supplied with Salt adequate to the wants of the population; and that the increased supply shown by the annual returns of golah clearances had been commensurate with any increase that could be assumed for that of the population in the period.

Second. That the price at which the Salt reaches the consumer under the present system is not burthensome to the lower orders, and does not operate to stint their consumption, which the Board argued is fully equal to their wants, and has always been so; moreover, that the price of the present day, though higher than at the early periods of the monopoly, and yielding a proportionately higher revenue, has not increased in any thing like the same ratio as that of grain and labour; and the augmented price must not therefore be regarded as pressing on the people with severity, since they now obtain their Salt at a smaller proportionate sacrifice of income than when it was nominally lower. As connected with this branch of the subject, fresh facts will be perceived to be adduced, and corroborating statements furnished in proof that the consumption was before correctly estimated by the Board at six seers per annum for each individual of the population.

Third. That the efforts of the Government to increase the supply to the consumer by augmenting the sales, and endeavouring to force an early clearance of the quantity sold, had had the effect of anticipating the revenue, and absorbing capital without sensibly increasing consumption. The arrear of sold but uncleared Salt having gradually accumulated nearly in proportion to the increased quantity sold in excess of the assumed consumption demand:

Fourthly,

\* Separate Consultations, Aug. 25, 1829. No. 6 to 8

† Ditto, Aug. 25, 1829. No. 9 to 22

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Fourthly. That the existence of this arrear afforded conclusive evidence that the consumption demand was every where supplied at present, and Salt provided for all purposes it could be applied to, while subject to the present rate of tax; because in the contrary case it must be supposed that the merchants found their profit in leaving the capital they had advanced for the purchase locked up without return, while a market was available to them :

Fifthly. It was argued, from the above principles, that the existing Salt revenue was not capable of increase, by any extension of the supply to the population now furnished from the Calcutta sales ; indeed, that to maintain the existing revenue, it would be necessary to watch the clearances in future, and adapt the sales to the condition of the arrear of purchased but uncleared Salt which might have accumulated, diminishing rather than increasing the quantity exposed to sale, until the present arrear should be considerably reduced.

Sixthly. The Board closed the Letter in question by a proposition which seemed to follow from the above reasoning ; viz. that if it were desired to increase the existing revenue derived from Salt, it must be done by extending the same rate of tax to other tracts of country beyond those now furnished through the Calcutta sales ; and it was pointed out that this might be done in respect to the Benafes Province, either by pushing westward the chokers established on the Behar frontier, and so excluding the western Salts altogether from Benares, or by levying at Alluhabad a transit duty nearly commensurate with that realized through the sales in Bengal and Behar.

30. In the Board's Letter dated 15th August last, they applied the principles above set forth, and those maintained in their previous Letter of the 8th November 1828, to the existing condition of the manufacture and store of the article, and adverted particularly to the proportions of the year's supply of Salt to be obtained from the coast.

31. They argued, first, that the reports of illicit dealings in Salt were much exaggerated, the proof of which was, that an increasing quantity of Ruwana Salt had latterly been disposed of for consumption in the tract nearest to the site of manufacture, viz. between the golahs and the outer or most distant chokers, and that Salt could find no market at all in the tract in question if the article were supplied illicitly at the price of manufacture as asserted, consequently that an extension of the sales, in order to provide cheaper Salt to displace the contraband within the protected limits, was uncalled-for, and would injure the revenue.

Secondly. Assuming 46 lacs of maunds, or thereabouts, to be the supply required for consumption in the tract supplied from the sales, and comparing this with the manufacture of late years, the Board found the Bengal agencies to have been brought to yield nearly 40 lacs of maunds of punja Salt, besides the produce of Cuttack, whence in the past year 8,87,000 maunds were imported at Sulkea, so that it was evident that punja or boiled Salt could be produced in sufficient quantity to furnish the entire sales if so deemed advisable. Moreover, from a statement furnished of the cost of production and profit at each agency, it was shown that, compared with coast Salt, that of Bullooah and Chittagong only was less productive in a revenue point of view, and that the unfavourable result at these

agencies was mainly owing to the introduction of a calamitous season into the period of average ; that for revenue purposes, therefore, the production of punga or agency Salt was more advantageous than importation, and that an increase of manufacture at Hidgellee, and the most productive agencies, would at any rate be preferable to a resort to the coast.

Thirdly. The Board, however, considered a certain quantity of solar evaporation or coast Salt to be required for the wants of the population, and they assumed that the annual sales should include not less than six lacs of maunds of Salt of that description. The manufacture of punga Salt was therefore argued to be excessive if carried much beyond forty lacs for both the Bengal and C agencies.

Fourthly. It is hence concluded, that the manufacture of punga or boiled Salt must be discouraged and reduced throughout the agencies until brought to yield about 35 lacs of maunds in Bengal, and five in Cuttack, which, with six lacks of imported Coast Salt, is the limit of quantity required for annual sale.

Fifthly. There appeared to have resulted from past over-production and import, a total store of 32 lacs of maunds not included in the sales, exceeding by 22 lacs the store required to meet defects of season and other contingencies ; consequently, independently of the measures required to be taken to make production keep pace with the probable requisitions for sale annually, some special measures seemed to be indispensable to get this excess of store taken off for consumption.

Sixthly. The Board conceived that this could only be done by reducing manufacture in the coming season to a point very considerably below that assumed for ordinary supply, and whereas 35 lacs was the quantity so assumed for the Bengal agencies, the tacedad, or contracts, must be reduced to 25 lacs of maunds for the ensuing two seasons, to enable the sales to take off in both the present excess of 22 lacs in store.

Seventhly. The existing store of coast Salt not being estimated at more than two lacs of maunds, the Board recommended an import of six lacs to be authorized from Madras for the ensuing, and the same for subsequent years.

Eighthly. Authority was solicited for ordering a rateable diminution of the tacedads, or engagements, to be entered into with Molunghees in September of the year, to a scale making for the Bengal agencies, a total supply of only 25 lacs, and from Cuttack five lacs.

Ninthly. The Board promised a revision of the state of things in every auring at each agency, preparatory to an adjustment of reduction on a permanent footing hereafter, on the principle of discontinuing manufacture where the cost of production was highest, and maintaining it where the profit yielded was the largest ; and they professed the intention to make it their study to provide hereafter, that the quantity of Salt available each year, through manufacture and import, should always suffice for the sales, and the quantity sold for consumption without producing an accumulation of Government store unsold on the one hand, or of uncleared lots on the other, both being considered evils pregnant with great inconvenience, and some loss.

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32. The recapitulation of these heads will show your Honourable Court the wide fields of argument and illustration opened by the two Letters of the Board above referred to; we were not prepared to decide upon the expediency of adopting all the reasoning of the Board as the basis of future measures for the conduct of the Department. But on consideration of the statements and information furnished by the Board, and of the sentiments which they had expressed, we resolved to dispose of the specific propositions submitted by instructions to the following effect:—

First. With respect to the suggestion for subjecting the Province of Benares to a tax on Salt equal to that levied by the present system in Bengal and Behar, we referred the point to the Advocate General, in order to ascertain how far the Salt duty of the Western Provinces could be considered to come within the provisions of Section 25 of the Act 53 of his late Majesty. The determination of Government as to the course to be adopted on this proposition was therefore necessarily suspended until receipt of Mr. Pearson's reply to this reference, to which we shall presently revert.

Secondly. With respect to the permanent reduction of the manufacture in Bengal and Cuttack to a total quantity of 40 lacs (35 for the former and five for the latter), we apprehended that so long as there should be reason to believe that the consumption demand at the existing prices would not much exceed 46 lacs, it would be necessary to keep this limit in view in the management of the concerns of the department; but no immediate resolution of Government on the subject was required; indeed the Board promised a further communication in respect to the application of this principle, and the final determination of Government might, we conceived, well wait the result of the further investigation to be instituted.

Thirdly. The importation from the coast was fixed by the Board at about six lacs per annum permanently, commencing from the ensuing year; we approved this suggestion, and made the requisite communication to the effect to the Government of Fort St. George. We entirely concurred with the authorities of that Presidency in attaching importance to the encouragement of the coasting trade, supported by the demand for this kind of Salt existing in Bengal, and were sensible that the fixation of the quantity of Salt to be annually imported, must have the most beneficial effect to all parties concerned.

Fourthly. With respect to the reduction of the Bengal agency taeedads to a total of 25 lacs for the next two years, which was deemed necessary by the Board to enable the sales to take off, in the course of this period, 20 lacs of the existing store in excess of 10 lacs. We looked upon this proposition as a very strong measure, seeing that the manufacture of the Bengal agencies had heretofore stood at nearly 40 lacs. Nevertheless, in the reported state of the store unexposed to sale, which appeared to stand as high as 32 lacs of maunds, we did not see any other course that could be pursued to relieve the golahs, and adapt the production to the wants of the country. The Board were accordingly authorized to instruct the Salt agents to diminish their taeedads in the proportion suggested. Should difficulty, however, be experienced in carrying the measure through, or should a less injurious mode

mode of effecting the object proposed occur while the reduction might be in progress, we desired the Board to submit another reference on the subject. It would be right, we stated, to put the several agents in full possession of the above views, and to let them see the nature of the difficulties experienced or apprehended from the existence of the present excess of store, in order that their zealous co-operation might be secured in effecting the reduction, and that the Board might have the advantage of any suggestions which their acquaintance with the details of the department might enable them to offer.

33. The above were the only points specially submitted for our orders. Although we avoided entering on the general views and principles advocated by the Board, we nevertheless stated our concurrence in opinion with the Board, that the determination of the quantity of Salt to be sold in the course of the ensuing year should not be hastened; and we approved the principle by which the Board declared their intention to regulate the quantity to be advertised for sale, *viz.* by reference to the state of the clearances from the golahs of lots sold and paid for. It was, we thought, for obvious reasons, advisable that the information on this point, which was to guide the Board's recommendation, should extend to as late a date as could conveniently be contrived (for an anticipation of the determination as to the extent of next year's sales would encourage speculations upon increased price), from withholding the article to the injury of the interests as well of Government as of the consumers.

34. We further informed the Board that an early opportunity would be taken to submit to your Honourable Court the correspondence which had recently occurred in respect to the condition and prospects of the Salt revenue; for the importance of the item to the finance of the country required obviously that every means should be taken to clear the principles on which it was conducted from the possibility of misconstruction.

35. Some subsequent correspondence bearing on the general questions discussed, and considered on this occasion, is referred to in the margin;\* and we enclose copies of such of the papers as have not been entered on the proceedings already forwarded to your Honourable Court.

36. On our proceedings noted in the margin,† your Honourable Court will find the reply of the Advocate-General to the reference we made to him, as to the construction to be put on sec. 25, cap. 155 of the Act 53d Geo. 3, in its application to the duties levied by this Government on the Western Salts. Our object was to learn whether it would be necessary that any enactment we might desire to pass for altering the rates of these duties, should be submitted for the sanction of your Honourable Court, and the approbation of the Board of Commissioners for the Affairs of India, before it could be made into a law.

37. The reply of Mr. Pearson refers to a previous opinion on the same point, recorded as per margin,‡ and was clear upon the point. Construing the 25th section of the Act, cited in connection with the preceding matter, and particularly as containing the subject

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\* Separate Consultations, Jan. 23, 1829, No. 1 to 3; Feb. 20, No. 11; April 9, No. 6 to 10; June 9, No. 10 and 11; July 7, No. 5 and 6; Dec. 15.

† Ditto, April 14, 1829, No. 2.

‡ Ditto, Sept. 8, 1829, No. 20.



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of the 24th section, he looked upon the provision as intended to protect the external trade of India from any interference, by the levy of duties on the part of the local Government, at the ports and places to which traders from Europe might resort, and therefore as not applicable to the town duties levied in the interior, or to duties in the nature of the consumption duty on Salt, in the Western Provinces. Mr. Pearson added, that the places which were included in the Regulations to which we had referred him, were in the interior of the Mofussil; and he thought therefore the Government was empowered to modify the rules, and alter the rates of duty upon the several descriptions of Salt which those Regulations mentioned; and that the forms laid down in sec. 25 of the Act were not meant to apply to the case. Mr. Pearson, however, stated the point not to be altogether free from doubt and difficulty, inasmuch as the expressions of the Act were very general. The correspondence connected with this subject will be found recorded as per margin.\*

38. In consequence of this opinion from our law advisers, we ordered the Board of Customs to consider again, as open questions,

First, The measures recommended by the Collector of Customs at Agra, in the year 1827, for equalizing the rates of duty on the Western Salt, which measures this Government, at the time, thought beyond its powers with reference to the Act cited above; and,

Secondly, The propositions of the Board above referred to for levying an enhanced duty on the Western Salt consumed on the Benares Province. We desired the Board to prepare and submit the draft of a Regulation, providing for both objects; considering that in the present condition of the public finances, the prospects of obtaining a considerable increase of revenue, through the adoption of one or both of the above propositions, was well deserving of attention.

39. On our proceedings of the 13th ultimo is recorded the Board's reply, submitting a draft of enactment providing for both objects.† Along with it the Board forwarded a note obtained from Mr. H. Mackenzie, of the result of his inquiries on the subject of the Western Salts, made while in attendance on the Earl Amhorst, in the year 1826-27. Copies of all these papers are appended as separate numbers in the packet.

40. We ordered our Secretary to revise the draft, and prepare it for publication. His note on the subject is added.

41. We resolved to adopt the Regulation as altered by our Secretary; and it was accordingly transferred to the Judicial Department, to be passed in due form. It stands No. 16 of the Code of this year, and we anticipate that it will essentially lead to a considerable increase of revenue. With reference, however, to the doubts that may arise as to the legal competency of this Government to pass an enactment of this description, we have deemed it necessary to lose no time in bringing the subject fully before your Honourable Court, in order that the opinion of the law officers of your Honourable Court, and of His Majesty's Government in England, may be taken thereon. Moreover, to meet the possible, though we hope improbable case of our Advocate-General's construction

\* Separate Consultations, Nov. 13, 1828, No. 20 and 21; April 14, 1829, No. 2 and 3; July 28, No. 6; Sept. 8, No. 20 and 21.

† Ditto, Nov. 13, 1829, No. 1 to 4.

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construction of the Act not being confirmed, we annex a separate copy of the Regulations, drawn out in a form to receive your sanction, and the approbation of Commissioners for the Affairs of India, in the event of its being re-enacted the law in that form, and of your approving the measure.

the Regulation  
the Board  
necessary to

ADMINISTRATION  
OF MONOPOLIES.

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We have the honour to be, &c. &c.

(Signed) W. C. BENTINCK.  
COMMISSIONER.  
W. B. BAYLEY.  
C. T. METCALFE.

Fort William, 8th December 1829.

## No. 27.

EXTRACT Letter, in the Separate Department, from the Governor-General in Council in Bengal to the Court of Directors; dated 1st October 1830.

137. On the proceedings of the annexed date is recorded a Letter from the Board of Customs, Salt and Opium, recommending to our consideration a reduced scale of 42,00,000 maunds of Salt for the ensuing year, and submitting the grounds on which the Board adopted the opinion, that while the reduced scale would tend to clear from the Company's godowns a quantity of sold salt, but remaining on hand, and which it was desirable to throw into the market, no interference with the public comfort could be reasonably apprehended, inasmuch as including the quantity proposed to be sold, 53,00,000 of maunds would be available for the year's consumption, whereas the total clearance of any past year, even under the operation of a premium granted to encourage the removal of Salt from the Government storehouses, had never approached that quantity.

138. Without entering into any discussion on the general principles which should regulate the administration of the Salt monopoly, and which question indeed it would be useless to agitate further now, we conceived that the views of the Board were, with reference to the present state of the Salt Department, and to other circumstances connected with finance and the money market of the Presidency, prudent and judicious. The Board was therefore authorized to limit the quantity of Salt to be sold at the public sales of the year under report to 42 lacs of maunds, nor did we conceive it desirable to embarrass the transactions of the market by directing the adoption of either of the suggestions conveyed, though not recommended, in the 15th paragraph of the Board's address under notice, in the event of our deeming this supply likely to prove inadequate.

EXTRACT, Bengal Salt and Opium Consultations, 16th February 1830.

LETTER from the Board of Customs, Salt and Opium, to the Right Honourable Lord William Cavendish Bentinck, G. C. B., Governor-General in Council.

MY LORD:

21 January 1830.

The period has arrived in which it is necessary to determine the quantity of Salt to be brought to sale in the ensuing year.

2. The

## 1018 FOURTH APPENDIX TO THE THIRD REPORT OF THE

2. The accompanying statements furnished to us by the Accountant, exhibit the monthly clearance of the year now drawing to a close, and the state of the golahs on the 31st ultimo, compared with that of the same date of the preceding year.

3. Your Lordship in Council will perceive that the quantity of Salt taken from the golahs and carried into the interior, between the 1st January and the end of December last, has been rather more than 45 lacs of maunds, while in the same months of the preceding year, the clearances exceeded 46 lacs. The uncleared lots again, which at the end of 1828 amounted to maunds 13,62,124, were on the 31st ultimo maunds 13,98,724. The limitation in the present year of the sale quantity of 45 lacs of maunds, which in 1828 was 46 lacs, has prevented any very considerable extension of the balance of Salt in the Government golahs; one lac of maunds, however, has been less cleared in the year, while for the last eight months, or from the beginning of the official year, a still greater abatement is apparent; the clearances having been only maunds 32,72,223, when in 1828 they amounted to maunds 34,20,391.

4. There can be no doubt that this growing slackness in the merchants to remove their Salt has been owing to the excessive supplies of the article that have been sent into the interior of late years, and particularly to the large clearance effected in 1827,\* when a premium was granted, and other measures taken, having a tendency to force the exportation.

5. Our inquiries from the Salt merchants and others, ascribe the fact to the same cause; and the Reports which we recently submitted from the Commissioners of Revenue for the 14th and 20th Divisions bear out the general declaration, that the markets of the interior are still and have for some time past been overstocked.

6. This state of things precludes us from recommending a large sale in the coming year. There are, however, some other circumstances to be considered.

7. It seems to us of great importance to get rid of a portion of the still very heavy balances of uncleared Salt in our golahs.†

8. This balance, as before stated, was on the 31st ultimo, nearly 14 lacs of maunds. We have reason to expect that the clearances of the present month and of February will keep pace with the quantity of Salt sold and to be sold in that time. Our next year's operations, therefore, have to be considered with reference to the 14 lacs of maunds that are uncleared, and which, it is to be observed, are now in the market, available for the consumption of the population, with reservation only of such proportion as may be requisite to carry on the concern. We find from the statement above referred to in the margin, that this need not be assumed at more than three lacs of maunds; so that the difference of 11 lacs have to be added to the quantity that may be exposed to sale.

9. Such being the case, we are disposed to recommend that no more than 42 lacs of maunds

\* Vide Statement annexed to Para. 6 of Board's Address to Government, dated 8th November 1828. The years are there calculated from the 1st February to the 31st January; what is therefore denominated 1827-28 may be more properly called 1827, as it only includes one month of the following year.

† Vide Statement in the Board's Letter of the 9th July last, which shows that of late years the quantity of salt in the golahs has more than doubled what it used to be.

# SELECT COMMITTEE OF THE HOUSE OF COMMONS. 1019

ADMINISTRATION  
OF MONOPOLIES.

maunds be sold in the ensuing year, which would still give a total available supply of 53 lacs of maunds to the community.

Salt.

10. This supply we hope to have proved is more than fully equal to the year's consumption, while it exceeds the total clearance of any year, even when a premium was granted to encourage exportation.\* The limitation of quantity, moreover, instead of producing any diminution of revenue, will, we are persuaded, tend to a present increase; while the measure seems to us necessary, in order to bring back the operations of the Department to that wholesome condition, from which, in the desire to increase the supply to the consumer by extended public sales, we cannot but think there has been some deviation.

11. A sale confined only to 42 lacs of maunds would further restore confidence to the Salt merchants which, in the present state of the money market, and under the impossibility of their continuing the present scale of advances to the Government, is of the first importance; so much so, indeed, that but for some relief of this sort, we should apprehend, from this cause alone, a very great reduction in our selling prices. The quantity of Salt that has been annually put up for sale of late, in spite of the accumulation of uncleared lots, has been one main cause of their embarrassments; and the influence of other events has also affected their interests. All the usual facilities under which lots have been heretofore cleared, *viz.* the accommodation of the public and private banks, and of the Native Shroffs, are now, we believe, granted at the most unfavourable rates, if not wholly withheld; and your Lordship in Council will be sensible of the vast disadvantage, in this respect, at which speculators would bid more, particularly with reference to the strict enforcement of the conditions of our sales, which has been more than once enjoined by the Government.

12. The

## \* Actual Clearance of Salt for the last Ten Years.

	In 1820	..	Mds. 46,22,279
	1821	..	46,38,392
	1822	..	46,03,881
From 1st Feb. to 31st Jan.	1823	..	46,50,605
	1824	..	51,25,292
	1825	..	44,83,749
	1826	..	46,50,597
	1827	..	49,42,912
From 1st Jan. to 31st Dec. {	1828	..	46,18,178
	1829	..	45,52,442
			4,68,84,327

Average of Ten Years .. Mds. 46,48,832

Vide Statement above referred to.

Salt.

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12. The annexed statement\* exhibits the gross and net sums which may be expected to be realized according to the quantity of Salt that Government may resolve upon bringing to sale. It will be seen that the estimated net profit, from assuming the quantity we recommend of 42 lacs of maunds, as compared with a sale similar to that of the present year, is ten lacs of rupees in excess, which probably will be a consideration with the Government.

13. One great motive, however, for recommending so small a sale is, as before stated, to reduce the balance of uncleared lots.† Government have stated that they would be willing, did their finances allow, to give the experiment of disposing of our Salt at fixed prices a fair trial, but to free ourselves from the greater part of the Salt that has been already sold, and is in our golahs, is obviously an essential preliminary to any change of system. The balance at the end of two years will, under such an arrangement as we propose, be reduced to what is proper, when the effect would be, that our golahs will be filled with Salt the property of Government instead of that of individuals, and it would then at any time be free to Government, if they see fit to open the golahs at a fixed price, without injuring the interests of any person, and with the assurance that from the time of their being opened, issues of the Salt and in-comings of the Government revenue would commence immediately.

14. Government will be able to determine, by the result of the present year, how far it may or may not be expedient to continue it for another; but under any circumstances we shall be better able than we are now to hold, if it is deemed right, a large sale, without the fear of its occasioning distress to the money market, or to the dealers in this particular article.

15. The only objection to so small a sale as that of 42 lacs of maunds is a possibility that the purchasers or merchants might thereby get a command of the market, and for the sake of extravagantly high prices still hold their Salt back from the interior. This might be obviated by a clause in the advertisement, providing for the sale of an extra quantity of Salt, to any extent that may be thought right, in the event of the clearances not being found at specific periods of the year to have equalled such as are usual, or the interests of the

*	Estimated Selling Price, per 100 Maunds.	Amount Estimated Proceeds.	Deduct Estimated Costs and Charges.	Estimated Net Profit.
	Sa. Rs.	Sa. Rs.	Sa. Rs.	Sa. Rs.
46,00,000	340	1,56,40,000	53,82,000	1,02,58,000
45,00,000	350	1,57,50,000	52,65,000	1,04,85,000
44,00,000	360	1,58,40,000	51,48,000	1,06,92,000
43,00,000	380	1,63,40,000	50,31,000	1,13,09,000
42,00,000	390	1,63,40,000	49,14,000	1,14,66,000
41,00,000	400	1,64,00,000	47,97,000	1,16,03,000
40,00,000	410	1,64,00,000	46,80,000	1,17,20,000

† Letter from Mr. Secretary Prinsep, 21st November 1828.

the consumers might be secured by limiting the selling price at our sales to that estimated, and by bringing forward an additional quantity of Salt, if the average sale price exceeds that amount, but such a condition would perhaps render things uncertain, and be so far injurious, while we should hardly on any other account think it necessary.

16.\* We think it right to add on this occasion, that we have succeeded in reducing the tydaad of the Bengal agencies to twenty-five lacs of maunds in the coming year, and that of Cuttack to five lacs of maunds. The statement in the margin,\* will show that a sale of 42 lacs of maunds will still leave our golahs burthened with a large quantity of superfluous Salt, but it will be so far satisfactory, that we shall be able to bring down the Government store to the wants of the market with less violence and distress to the manufacturing classes than might have been anticipated.

17. The supplies that will be required in the year from the coast have been already fixed by your Lordship in Council at six lacs of maunds.†

18. We conclude that it will not be necessary to make any alteration in the periods or number of our sales, or in their conditions, unless, indeed, your Lordship in Council should think the precaution necessary that is adverted to in the 15th paragraph. The accompanying advertisement has been drawn up in the same form as that of the current year.

19. We have thus endeavoured to place the subject in what we think the proper light before the Government. It strikes us that the measure we have recommended cannot fail of being highly advantageous, as well to the Government as to the Salt merchants, while the rate at which the article will be given out to the community is within the Government limit,‡ and cannot be regarded as burdensome; but we shall

\* Quantity of SALT to be Manufactured in 1236.

Hidgellee .. ..	8,29,000
Tumlook .. ..	5,71,000
24 Pergunnahs .. ..	3,84,000
Jessore .. ..	2,98,000
Bulloah .. ..	2,78,000
Chittagong Pungah .. ..	1,40,000
Ditto Kurkutch .. ..	20,000

Maunds .. 25,20,000

PUNGAH SALT.

BENGAL AGENCY :

Balance of Salt expected to be on hand after February Sale } 22,14,066

CUTTACK, &c.

Balance ditto ditto .. .. 5,79,181

Carried forward .. 27,93,247

PUNGAH SALT—continued.

Balance brought forward ..	27,93,247
Ditto Forfeited Salt .. ..	1,70,000
	29,63,247
Ditto Madras, Permit and other Foreign Salt .. ..	3,35,977
Total Balance .. ..	32,99,224

BENGAL TAIDAAD :

Of 1236 .. ..	25,20,000
Cuttack, &c. .. ..	5,00,000
	30,20,000
Madras Permit to be imported in 1830 .. ..	6,00,000
Maunds .. ..	69,19,224

\* Letter from Government, 25th August last.

† At the estimated selling price of 390 per 100 maunds.

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ADMINISTRATION  
OF MONOPOLIES.

Salt.

be most happy to give effect to any other view which your Lordship in Council may take of the matter.

Board of Customs, Salt and Opium,  
21 January 1830.

We have the honour to be, &c.

(Signed) G. CHESTER.  
H. SARGENT.

No. 238.

LETTER from J. A. Dorin, Esq., Accountant, to the Board of Customs, Salt and Opium.

Gentlemen,

16th January 1830.

AGREEABLY to the orders set forth in Mr. Secretary Parker's Letter, under date 10th June 1829, I have now the pleasure to wait on the Board with the Statement of the golah clearances for December last.

I have the honour to be, &c.

Fort William, Accountant's Office,  
16th January 1830.

(Signed) J. A. DORIN,  
Accountant.

STATEMENT, exhibiting the Clearance, &c. of SALT from the GOLAHs of the several Agencies for the Month of December 1829, compared with the Clearances for the Month of December 1828.

		2.	3.	4.
	Quantity of sold Salt cleared in the Month of December 1829.	Quantity of sold Salt cleared in the Month of December 1828.	Total Quantity of Salt sold, cleared from the beginning of the Official Year till 31st December 1829.	Total Quantity of sold Salt, cleared from the beginning of the Official Year till 31st December 1828.
Hidgellce ..	1,18,715 0 0	99,850 0 0	6,42,484 30 0	5,68,944 30 0
Tumlook ..	97,600 0 0	53,460 17 0	5,21,341 11 10	5,80,625 27 0
24 Pergunnahs..	77,400 0 0	41,026 1 0	5,46,877 0 0	3,54,333 34 0
Jessore.. ..	47,639 0 0	35,415 0 0	3,04,148 0 0	2,51,080 0 0
Bullooah ..	53,000 0 0	37,000 0 0	2,03,162 0 0	2,30,500 0 0
Chittagong ..	21,000 0 0	12,000 0 0	1,15,000 0 0	1,02,000 0 0
	4,15,254 0 0	2,78,715 18 0	23,33,013 1 10	20,87,484 11 0
Sulkea Golahs..	95,750 0 0	1,11,257 0 0	9,39,210 29 0	13,32,907 0 0
TOTAL ..	5,11,004 0 0	3,90,008 18 0	32,72,223 30 10	34,20,391 11 0

(continued.)

SELECT COMMITTEE OF THE HOUSE OF COMMONS 1833

ADMINISTRATION  
OF MONOPOLIES.

(continued.)	5. 6. 7. 8.				Salt.
	Quantity of Salt Sold, but remaining uncleared, up to 31st December 1829.	Quantity of Salt sold, but remaining uncleared, up to 31st December 1829.	Quantity of Salt remaining unsold up to 31st December 1829.	Quantity of Salt remaining unsold up to 31st December 1829.	
Hidgellee ..	3,80,941 10 0	3,85,518 10 0	10,50,027 24 12	6,40,254 35 12	
Tumlook ..	3,14,486 0 0	2,39,766 0 0	6,57,301 14 2	5,64,200 22 2	
24 Pergunnahs..	1,40,155 0 0	1,63,962 0 0	2,34,123 20 0	3,25,955 22 0	
Jessore..	1,29,788 0 0	90,853 0 0	3,07,060 24 0	2,70,398 14 0	
Bullooah ..	1,33,361 0 0	1,24,012 0 0	2,98,248 2 11	1,69,428 3 15	
Chittagong ..	66,013 0 0	56,013 0 0	2,22,125 4 11	1,10,216 17 11	
	11,64,724 10 0	10,60,124 10 0	27,69,946 10 4	20,80,453 36 8	
Sulkea Golahs..	2,34,000 0 0	3,02,000 0 0	11,61,069 11 0	10,36,763 0 0	
TOTAL ..	13,98,724 10 0	13,62,124 10 0	39,31,015 21 4	31,17,216 36 8	

(Errors excepted.)

Fort William, Accountant's Office,  
16th January 1830.

(Signed) J. A. DORIN,  
Accountant.

No. 239.

LETTER from J. A Dorin, Esq., Accountant, to H. M. Parker, Esq., Secretary to the  
Board of Customs, Salt and Opium.

Sir:

18th January 1830.

I HAVE to request that you will be good enough to lay before the Board the accom-  
panying "Statement, exhibiting the quantity of salt sold by public auction, and cleared  
from the different Golahs" in the years 1828 and 1829.

I have the honour to be, &c.

Fort William, Accountant's Office,  
18th January 1830.

(Signed) J. A. DORIN,  
Accountant.



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Salt.

STATEMENT of the Quantity of SALT Cleared from the Agency and Sulkea Golahs, from 1st January to 31st December 1828, and from 1st January to 31st December 1829, with a Memorandum of the Total Quantity of Salt sold, but remaining uncleared, up to 31st December 1828 and 1829.

					Quantity of Salt sold by Public Auction in 1828.	Quantity of Salt sold by Public Auction in 1829.	Monthly Clearance of Salt in 1828.	Monthly Clearance of Salt in 1829.
					Maunds.	Maunds.	Maunds.	Maunds.
January	..	..	..	..	4,00,000	4,00,000	3,69,134	4,42,237
February	..	..	..	..	4,00,000	4,00,000	3,44,183	3,19,518
March	..	..	..	..	4,00,000	3,00,000	2,60,062	2,69,090
April	..	..	..	..	4,00,000	3,00,000	2,25,650	2,21,185
May	..	..	..	..	4,00,000	3,00,000	2,07,003	2,79,557
June	..	..	..	..	—	4,00,000	4,06,953	3,31,186
July	..	..	..	..	4,00,000	4,00,000	5,84,665	4,49,402
August	..	..	..	..	5,00,000	4,00,000	5,84,398	4,85,311
September	..	..	..	..	5,00,000	4,00,000	4,98,797	5,50,846
October	..	..	..	..	4,00,000	4,00,000	3,73,585	2,44,164
November	..	..	..	..	4,00,000	4,00,000	3,73,740	4,18,942
December	..	..	..	..	4,00,000	4,00,000	3,90,008	5,11,004
					46,00,000	45,00,000	46,18,178	45,22,442

MEMORANDUM.

QUANTITY of SALT sold, but remaining uncleared up to 31st December 1828	Maunds.
Ditto .. .. ditto .. .. up to 31st December 1829	13,62,124
	13,98,724

(Errors excepted.)

Fort William, Accountant's Office,  
18th January 1830.

(Signed) J. A. DORIN,  
Accountant.

# SELECT COMMITTEE OF THE HOUSE OF COMMONS. 1025

ADMINISTRATION  
OF MONOPOLIES.

LETTER from H. M. Parker, Esq., Acting Secretary to the Government, to the Board  
of Customs, Salt and Opium.

Salt.

Gentlemen :

16th February 1830.

I AM directed by the Governor General in Council to acknowledge the receipt of your Letter dated 21st ultimo, recommending to the consideration of Government a reduced sale of maunds 42,00,000 of Salt for the ensuing year, and submitting the grounds on which you have adopted the opinion, that while the reduced sale will tend to clear from the Honourable Company's golahs a quantity of sold Salt with which they are encumbered, and which it is desirable to throw into the market, no interference with the public comfort can be reasonably apprehended, inasmuch as that including the quantity proposed to be sold, 53,00,000 of maunds will be available for consumption; whereas the total clearance of any past years, even under the operation of a premium granted to encourage the removal of Salt from the Government store-houses, has never approached that quantity.

2. Without entering into any discussion on the general principles which should regulate the administration of the Salt monopoly, and which question, indeed, it would be useless to agitate further now, Government conceive that the views of your Board are, with reference to the present state of the Salt department, and to other circumstances connected with financial considerations, prudent and judicious; you are therefore authorized to limit the quantity of Salt to be sold at the public sales of the ensuing year to 42 lacs of maunds; nor does the Governor General in Council conceive it desirable to embarrass the transactions of the market by directing the adoption of either of the suggestions conveyed, though not recommended, in the 15th paragraph of your address

Council Chamber,  
16th February 1830.

I have, &c.  
(Signed) H. M. PARKER,  
Acting Secretary to Government.



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# LIST.

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# FIFTH APPENDIX.

THE ESTABLISHMENT OF  
LEGISLATIVE COUNCILS,  
A NEW SYSTEM OF COURTS OF JUSTICE,  
AND A CODE OF LAWS,  
IN BRITISH INDIA.

(Territorial Department, Revenue.)

LETTER from Holt Mackenzie, Esq., to P. Auber, Esq., &c. &c. &c.

LEGISLATIVE  
COUNCILS,  
&c

SIR :

Fort William, 20th October 1829.

With reference to my letter of the 1st September last, I am directed by the Governor-General in Council to transmit to you, for the purpose of being laid before the Honourable the Court of Directors, copies of the several Papers specified in the annexed List, of which the subject will hereafter be again brought to the notice of the Court in a separate Despatch.

I have the honour to be, Sir,

Your most obedient servant,

(Signed)

HOLT MACKENZIE,  
Secretary to Government.

No. 1.

LETTER from Lord W. C. Bentinck, Governor-General in Council, to the Honourable Sir Charles E. Grey, Knight, Sir John Franks, Knight, and Sir Edward Ryan, Knight, Judges of the Supreme Court of Judicature at Fort William.

Governor-General  
in Council  
to Judges of  
Supreme Court.

HONOURABLE SIRs :

Fort William, 14 July 1829.

In pursuance of the intention stated in the concluding paragraph of our Letter of the 13th instant, we have now the honour of communicating to you the views and sentiments

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which

LEGISLATIVE  
COUNCILS,  
&c.

Governor-General  
in Council  
to Judges of  
Supreme Court.

which we entertain in regard to the measures to be pursued for the adjustment, among others, of the important question discussed in the Despatch addressed by you to the Secretary to the Board of Commissioners for the Affairs of India.\*

2. Previously to the receipt of that Letter, the defective state of the Law relating to the jurisdiction of the King's Court, and to the powers of the Government and of the Tribunals established by its authority in the interior of the country, had for some time occupied our attention.

3. In regard to almost every provision of the British Parliament, whether for defining the legislative authority of the Governments of the several Presidencies, or for prescribing the course to be pursued by them in the executive administration, questions have arisen of a very embarrassing nature. The rules applicable to the Sudder Dewanny and Nizamut Adawlut, and to the subordinate Native Courts, which rest on parliamentary enactments, though few in number, have given rise to many doubts and difficulties. Those relating to the rights and obligations of individuals are not more free from obscurity.

4. On several important points the question of the jurisdiction of His Majesty's Courts appears to be involved in doubts, productive of alarm to our native subjects, of embarrassment to the local Governments, and discredit to our country. In some instances it seems to us, that those Courts have been compelled, by a construction of the law contrary to the probable intention of the Legislature, to extend their jurisdiction in a degree inconsistent with the public convenience; and we cannot but perceive that a delay which must attend a reference to England, for the purpose of removing such doubts, or of reconciling the obligations of the law to the exigencies of State expediency, might be attended with the most afflicting consequences. In cases, moreover, in which the co-operation of the King's Court is requisite to the validity of the laws and ordinances of the local Governments, there exist no means, short of an application to Parliament, of insuring consistency of proceeding at the several Presidencies, however essential to the public interests. The legislative powers vested in the several Governments, in their application to British-born subjects, and to persons of all nations and persuasions residing within the cities of Calcutta, Madras and Bombay (some of whom have no recognized law of marriage or inheritance), appear to fall in several respects short of what the exigency of the case demands; and the present system, under which rules and ordinances applicable to those cities are passed, seems to be open to many and serious objections.

5. The good fortune which this Presidency has enjoyed does not materially lessen our sense of the evil, since it is obvious that the mischief of an inapplicable law can never be cured by the wisdom and moderation of judges bound to obey it. We can only therefore derive from the circumstance the gratifying assurance, that in soliciting your aid and advice, our representation will be met with a cordial desire to concur in every measure that may appear calculated to promote the interests of our country.

6. While we are strongly impressed with the defectiveness of the existing law, as applicable to the state of things for which it was designed to provide, we see abundant reason to conclude, that the changes which have recently occurred, and those which may soon be anticipated, are likely to render its imperfections still more glaring.

7. The

\* In the General Department, Consultation, 13th June 1827, No. 5.

7. The new Insolvent Act must apparently give rise to many cases very inadequately provided for. Some parts of the law for the improved administration of criminal justice, appear to contemplate the existence of institutions not known to the country; and if increased facility be given to Europeans to settle in the interior, and to acquire landed property, a measure which we deem essential to the best interests of England and of India, it is clear that many and serious inconveniences must be experienced, unless they be liable, with the rest of the inhabitants, to the authority of the local Courts.

8. In deliberating on the means of correcting past omissions, and of providing for the exigencies of the future, we are forcibly struck with the apparently insurmountable obstacles that present themselves to the attempt of accomplishing those objects by a parliamentary enactment for the several cases. To hope that all the points which will arise can be anticipated by any scheme of prospective legislation, would be visionary. To expect that the matters which have actually presented themselves can be provided for by Parliament, without giving occasion to many new and intricate questions, would be to overlook the result of all past experience. It will be equally at variance with all the conclusions which we should draw from general reasoning. Even in legislating relative to things most familiar, with all the advantages of full discussion by the parties interested, and all the information acquired by the daily business of life, it is seldom that the consequences of a law are fully anticipated.

9. With such impressions, we cannot resist the conclusion, that it is a matter of the most urgent expediency to have in this country an authority legally competent to legislate for all classes and all places, subject to the political authority of the Honourable East-India Company; and this persuasion, the facts and observations stated by you in the Despatch to which we have already referred, are calculated powerfully to confirm. Now, in the present circumstances of the country, there seem to be no elements for a Legislature, excepting the Government and His Majesty's Courts; and it seems to us that the concurrence of both is, for a variety of reasons, highly desirable. In other words, we should propose, that the Members of the Supreme Government and the Judges of the Supreme Court of Calcutta should be constituted a Legislative Council, with power to enact laws for the guidance of all Courts, whether established by the King or by the local Government, within the territories of the East-India Company, and for the regulation of the rights and obligations of all persons subject to their authority.

• 10. By these means we should hope that the defects of the law, as now existing, might be speedily and safely corrected, without imposing upon you any burdensome additional labour, or requiring from you any duty inconsistent with the most complete independence in your judicial capacity.

11. We should anticipate very great benefit from a change by which the judges of your Court would be constitutionally empowered and authorized to afford us the full benefit of your experience and legal knowledge, and by which they would, equally with the Members of the Government, have a voice in regard to the expediency of all proposed laws, instead of being confined, as now, to a decision on the question of their repugnance or otherwise to English law, after the Government has committed itself by their enactment.

12. The registry and publication of such laws in the Supreme Court, with the same

LEGISLATIVE  
COUNCILS,  
&c.

Governor-General  
in Council  
to Judges of  
Supreme Court.

right of appeal to the King in Council, might be made, as now, in the case of rules and regulations for the good order and civil government of the Presidency; the Judges of the Court having, however, as such, administrative functions only. Any argument against a proposed law (supposing parties to appear and oppose it) to be heard, if heard at all, before the Supreme Council, constituted as above, from which the appeal to His Majesty in Council should lie.

13. Coming to the above conclusion, as to the general measure to be adopted for remedying the defects of the existing system, it does not appear to be necessary for us to enter into any detailed explanation of the circumstances under which those defects have practically developed themselves, or of the specific rules and regulations by which we should propose to apply a remedy. It may not, however, be irrelevant to state, that we are informed that the persons whose case has been submitted by you to His Majesty's Government had, previously to their being put upon their trial in the Supreme Court, been tried by the Court of Circuit, three of whom were acquitted by the Judge of that Court for want of proof, and one was ordered to be discharged by the Nizamut Adawlut, on a reference from him, on a failure in jurisdiction, in consequence of the stolen property having been found in the prisoner's possession within the limits of the town of Calcutta. It may also be proper to take this opportunity of remarking, that the criminal law, as administered by the Nizamut Adawlut and the subordinate Courts in the interior of the country, retains but little of the Mahomedan Code, whether in respect to the laws of evidence, or to the punishments annexed to offences, and that we most anxiously desire to adopt all practicable improvements in the constitution and forms of those Courts, so as to obviate every reasonable objection against the extension of their jurisdiction to all cases which can be expediently subjected to that of your Court.

14. The immediate object, however, of the present Address is to solicit a communication of your opinion on the general question. And should your sentiments concur with those we entertain, as to the expediency and necessity of enlarging the legislative powers of Government, we shall be much obliged to you if you will further state the conclusions to which a consideration of the subject may lead you, in regard to the mode in which such powers could best be exercised, and the limitations to which the exercise of them should be subjected.

15. We have directed our Judicial Secretary to furnish you with all the Papers which we have had immediately under consideration on the present occasion, and with any others to which you may desire to refer.

We have, &c.

(Signed)

W. C. BENTINCK.  
W. B. BAYLEY.  
C. T. METCALFE.

# SELECT COMMITTEE OF THE HOUSE OF COMMONS. 1057

(Miscellaneous.)

No. 2.

LETTER from Board of Revenue, Lower Provinces, to Lord W. C. Bentinck, Governor-General in Council, &c. &c. &c., Fort William.—(With two Enclosures.)

Board of Revenue, Lower Provinces,  
24th January 1829.

LEGISLATIVE  
COUNCIL,  
&c.

Board of Revenue  
to Governor-Gen.  
in Council

MY LORD:

We have the honour to submit, for the orders of your Lordship in Council, the accompanying Letter, addressed to our Secretary by the Receiver of the Supreme Court, with its Enclosure, described to be an authenticated copy of a Decree of the Supreme Court in the suit mentioned in the margin.\*

2. The Letter from the Receiver of the Supreme Court contains an application that instructions may be issued by the Board to the Local Collectors, for registering on their respective Records, as joint proprietors of the several lands adjudged to them, the names of the parties to whom those lands have been decreed.

3. We are not aware of any precedent for this application to us, and we are of opinion that decrees of this description by the Supreme Court should be carried into effect through the Mofussil Courts, to which the necessary application for the purpose should be made.

4. A mutation of names cannot, however, be legally entered in the Malgoozar Registers before possession has been obtained in the constituted manner; and we conclude, of course, that no decree of the Supreme Court can affect the liability of the entire state for arrears of public Revenue until a separation and allotment of Jumma shall have been made, on the application of the parties, in conformity with the provisions of the Regulation XIX., 1814; and if it shall be deemed expedient that orders be issued to the Collectors by this Board, we would propose to instruct those officers to enter the names of the parties as joint proprietors.

5. The orders of Government are more particularly solicited on the present occasion, inasmuch as we observe the Supreme Court has appointed one of its European officers to administer the collections and receive the rents of the six Annas share allotted to Woomeschunder Paul Chowdry, and the heirs and representatives of Ruttenchunder Paul Chowdry, deceased, of the lands and premises detailed in the Decree; thereby superseding, as we conceive, the jurisdiction of the Court of Wards in regard to the infant defendant, Gunganarain Paul Chowdry, should the estate of the said minor become subject to the jurisdiction of that Court; but in regard to the circumstances of which estate our Records do not at present afford us the means of information; and involving likewise a possible collision of authority between the Revenue Officers and the said Receiver and Manager, in case the landed property should at a future period come under attachment by orders of the Courts of Justice, as provided for by Regulation V. of 1827.

6. Until we shall be favoured with the receipt of the orders of your Lordship in Council, we shall postpone any communication in reply to the application from the Receiver of the Supreme Court.

We have, &c.

(Signed)

J. PATTLE.

W. BLUNT.

\* Woomeschunder Paul Chowdry and another versus Premchunder Paul Chowdry, &c.

# 1058 FIFTH APPENDIX TO THE THIRD REPORT OF THE

LEGISLATIVE  
COUNCILS,  
&c.

Enclosure 1  
in Letter from  
Bengal Board of  
Revenue.

(Enclosure in No. 2.)

LETTER from E. Macnaghten, Esq., to G. A. Bushby, Esq., &c. &c. &c.

Receiver's Office, Court House, Calcutta,  
23 January 1829.

SIR :

I have the honour to transmit herewith an authenticated copy of a Decree of the Supreme Court of Judicature, passed on the 16th of September last, in the suit of Woomeschunder Paul Chowdry and another, against Premchunder Paul Chowdry, &c.; and to beg that you will lay the same before the Board, with my request that instructions may be issued to the Collectors of the districts of Nadia, Jessore, and the twenty-four Pergunnahs, for registering in their respective Records the names of Woomeschunder Paul Chowdry and Wooljulmoner Dossee, the widow and representative of Ruttenchunder Paul Chowdry, as joint proprietors of the several lands adjudged to them by the said Decree, with a view to its provisions being duly carried into effect.

You will have the goodness to observe, that by the said Decree James Weir Hogg, Esq. is appointed the Receiver of the six Annas share allotted jointly to the said Woomeschunder Paul Chowdry, and the heirs and representatives of Ruttenchunder Paul Chowdry, deceased, and that the duties of Receiver have lately been transferred to me.

I have, &c.

(Signed)

E. MACNAGHTEN,  
Receiver, Supreme Court.

(Copy.)

In the SUPREME COURT of JUDICATURE at Fort William in Bengal.

In Equity.

The Honourable Sir Charles Edward Grey, Knight, Chief Justice ;

The Honourable Edward Ryan, Knight, Justice.

Enclosure 2

Tuesday the 16th of September, in the ninth year of the reign of His Majesty King George the Fourth, and in the year of our Lord 1828. Between Woomeschunder Paul Chowdry and Ruttenchunder Paul Chowdry, by Sree Multy Dossee, his mother and next friend, Complainant; and Premchunder Paul Chowdry, Isserchunder Paul Chowdry, Juggulkishore Bundapadho. and Ramsoonder Goopto, Defendants; by Original Bill: and between Woomeschunder Paul Chowdry and Ruttenchunder Paul Chowdry, an infant of Sree Multy Dossee, his mother and next friend, Complainants; and Isserchunder Paul Chowdry, Juggulkishore Bundapadho and Ramsoonder Goopto, and Joynorain Paul Chowdry, and Gunganorain Paul Chowdry, sons, heirs, and legal personal representatives of Premchunder Paul Chowdry, deceased, Defendants; by Bill of Revivor: And between Woomeschunder Paul Chowdry and Ruttenchunder Paul Chowdry of Woomeschunder Paul Chowdry, his brother and next friend, Complainants; and Isserchunder Paul Chowdry, Joynorain Paul Chowdry, and Gunganorain Paul Chowdry,

Chowdry, Juggulkishore Bundapadho and Ramscoonder Goopto, Defendants; by Supplemental Bill: And between Woomeschunder Paul Chowdry, Complainant; and Isserchunder Paul Chowdry, Joynorain Paul Chowdry, Gunganorain Paul Chowdry, Sree Multy Dossee, Defendants; by further Supplemental Bill: And between Woojulmoney Dossee, Complainant; and Woomeschunder Paul Chowdry, Isserchunder Paul Chowdry, Joynorain Paul Chowdry, Gunganorain Paul Chowdry, and Sree Multy Dossee, Defendants; by Bill of Revivor.

LEGISLATIVE  
COUNCILS,  
&c.  
—  
Enclosure 2  
in Letter from  
Board of  
Revenue.

\*This Court doth think fit to order, adjudge, and decree, and doth accordingly order and decree, that the partition and division of the several zemindaries, pergunnahs, dhees, villages, lands, messuages, houses, hereditaments and premises so made by the said returns and schedules to the said two several Commissions of partition issued respectively on the said 31st day of July 1824, and on the 7th day of June 1827, be firm and effectual for ever, and be carried into effect: And it is further ordered, adjudged and decreed, that the said Isserchunder Paul Chowdry, and the heirs and representatives of the said Premchunder Paul Chowdry, deceased, do and shall hold, and enjoy jointly, as members of a joint individual Hindoo family, and for their ten sixteenth parts or shares of the said lands and premises, the several lands and premises following; that is to say, No. 1, the Pergunnahs Allumpore, in the district of Nuddea, and province of Bengal, including Govindpore, comprising and consisting of sixty villages, and not sixty-four villages, as in the said Commission, issued on the 31st day of July 1824, are mentioned, and the lands and grounds appertaining and belonging thereto. No. 3, the Pergunnah Paujnoir, in the district of Nuddea, and province of Bengal, as by title-deeds, comprising and consisting of thirty-six villages, and not thirty-eight villages, as in the said Commission described, and the lands and grounds appertaining and belonging thereto. Of No. 4, the Dhee Unmendorpore and others, in the Chucka Sreemuggur, in the district of Nuddea, and province of Bengal, comprising and consisting of eighty-three, and not eighty-two villages, as in the said Commission mentioned; the fifty-eight villages following; that is to say, Nijsanpore, Ramsunkupore Rajahpore Chungrah in Tamf Tooroonepore Itchlanpore Bhoirloh Lalook Rogoonathpore, Khur Rajahpore Tulcomie Mamoodpore Nig Bhunder Colloh Palloh Kor Kulluh by Manoodpore, Konockpore Hoodugoraby Satasey Rostoomegore Dat Bhanga Chouzatcha Nij Champah, including Nobyekha Siemoolah Rammessore Pore Bangadunga, Nundou Kooly Nij Camdahpore Chattenah Nij Darupore Bolorampore, Hoodun Bolampore Bangalpore Nij Seroppore Russillohpore Gooroomary Dawooly, Nij Mothorgah Cheygoyroh Nij Chowgatcher Sibpore Hoodamampore Henguaiah Mahaachandrapore Cheerly Pooroonah Bolubpore Nuckhanpore Boltah Jaotah Dhurnopore Coomloleh Rotchulpore and Takver Pautchpollah Nij Baughlancy Soerjun Mandpore Maneckloll Mutterpore Chiltalah Bullubpore Rockchulpore Bookvor Pautchpotah, and the lands and grounds appertaining and belonging thereto. No. 5, the Pergunnah of Ameerabad in the same district and province, comprising and consisting of four villages, and the lands and grounds appertaining and belonging thereto. No. 6, the village and lands of Decrepore and Mungenkollah, in the same district and province, comprising and consisting of two villages, and the lands and grounds belonging and appertaining. Of No. 10, the



LEGISLATIVE  
COUNCILS,  
&c.

Enclosure 2  
in Letter from  
Bengal Board of  
Revenue.

the Chucklah Dooleapore and Dhee Kissenpore, in the same district and province, consisting and comprising 149 villages, and not 189 villages, as in the said Commission mentioned; the ninety-three villages following; that is to say, Nij Malangoh Battpooley, Tughurry Mundogram Kautchroh Hanty, Bremmo Lanson Lawbealy including Jungul and Puttit Kultuosserepore Chuck Isslampore Bouna Daugah Okroh Cooraly, Shery Charol Goryroh Kholly Kottyham Howl Itcha Coor including Pantonea Pookereah and Jungul and Puttit Hanapore Chouheestah Gholah Doyepam Hansure Couty Khojah Bauah Gooah Baniah Chardiah Bessontpore, including Gomapoty, Nij Soonamoojory Dabouseah Gunge Cottah Mondo Cottah Bannatpire Cottah Pautkoley Sibpore Saibunderpore Jodo Danodopore Soder Cottah Dumralez Sair Cottah Rounadipore Cottah Sobono Gutcha Parooss Chuck Coman Cottah Ramaisorepore, Ragoorampore, Horicompore, Minojcottah Gonassepoore, Mohowkholly, Joyehtollah Nursingkholly Antopore Bholson Cottah Mahesey Mottah Tulloh Bhistnopore Mora Gotcha Noyee Hoitee, Chingrah Alleepore Joynagoo Nij Autsoth Porroh Bejercotte Godhoolah, Goyoroh Coley Kessore Hassampore Khoromey, Ansey Coor Sibpore, Chuck Sibpore Roghoosum Pooree Bajoodh, Goree Mondhoo Cottah Mastohapore Peraupore Joychundee Tulloh Camer Gorah Toher Bang Tolley Kholley Hamodoho, Ramagohindpore Choleattah Ghollah Chomarding Bickorlonpore Toongupore Boogdoll, Gopaulpore, Ramchunderpore, Baneeah, Dabeypore Cootabpore, Bargachee and Bublohpore, and the lands and grounds appertaining and belonging thereto. Of No. 11, the Dhee Bajuspore, in the Pergunnah of Datceea and district of Jessore, in the same province, consisting and comprising eighty-six and a half villages, and not eighty-four villages, as in the said Commission mentioned; the fifty villages following; that is to say, Nij Cahilpore, Pootreeah Kolly Kismut Soorooteah Chondopore Bacpempore Aaleypore Dabesorah Ekrapore Daleepore Indrougai Choopnagore, Mooradabad Luckhunagore Mogoorah Ghonoh, Nij Lingoh Khaloorah Maudpore, Syley Had, Hooleah Denbaka, Bore Barnery Modenpore, Rajahpore Ghesloh, Pookooreah Kismut, Sarickoodho Kismut, Sunoomeah Buckseyonpore, Koomareah Banttroh Noyacollee Bucksay, Zooropore Kismut, Chain Kollah, Goal Chattee, Rajindropore Kismut Koomareot Nij Rajah Bagilpore, Rajah Cottah Mohadebpore Monumpore, Cham Kollah Kismut Chetretloah, Goal Barreah, Jamlah Gourangpore Knolloy Mauleba, and the lands and grounds appertaining and belonging thereto. No. 12, the Dhee Dandpore, in the Pergunnah of Satoor, in the same district and province, consisting and comprising 163 villages, and the lands and grounds appertaining and belonging thereto. No. 13, a moiety of, in and to the Turruf Punamee, in the same district and province, consisting and comprising four villages, and the lands and grounds appertaining and belonging thereto. Of No. 18, four upper-roomed messuages, tenements or dwelling-houses, situate in Clive-street, in Calcutta, and province of Bengal; and of No. 56, eight buildings or godowns, lately erected or built at Clive-street, in Calcutta aforesaid; all which last-mentioned houses and godowns in Clive-street aforesaid are comprised and contained in the Map or Plan annexed to the Return to the said Commission of Partition issued on the 31st day of July 1824, and marked (X). No. 4, one upper-roomed house and three godowns, marked on the said Plan or Map with the letters (A.) (B.) and (C.), and four begabs, one cattah and one chittack of ground, whereon the said upper-roomed house and  
godowns

godowns are erected and built, and situate to the west of Clive-street aforesaid, and which said house, godowns and land are in the said Map or Plan coloured red. No. 19, one other upper-roomed messuage, tenement or dwelling-house, called Pastawall a Battee, situate at Sootanooley in Calcutta aforesaid, with fifteen cattahs and twelve chittacks, and not one begah, two cattahs and six chittacks, as in the said Commission mentioned, or thereabouts, belonging thereto; and which said house, lands and premises are comprised and contained in the Map or Plan thereunto annexed, and marked (X. No. 5.), and are therein distinguished and marked by the figure (No. 19.) written across the same. No. 20, one also a lower-roomed messuage or tenement, situate at Sootanooley aforesaid, called Secunder Sahib Battee, and the land whereon the same is erected and built, containing sixteen cattahs and two chittacks, and which said last-mentioned house and premises are comprised and contained in the Map or Plan thereunto annexed, marked (X. No. 6.), and are thereon distinguished and marked by the figure (No. 21.) written across the same. No. 22, a piece or parcel of land or ground situate and lying at Noaths Racey, in Calcutta aforesaid, containing four cattahs and five chittacks, and not about eight cattahs, as in the said Commission mentioned; and which said last-mentioned piece or parcel of land or ground is contained and comprised in the Map or Plan thereunto annexed, and marked (X. No. 5.), and is therein distinguished and marked by the figures (No. 22.) written across the same; and also all that piece or parcel of land or ground situate at Comortollah-street, in Calcutta, houses and premises thereupon erected and built, containing one begah and two cattahs, and which said last-mentioned piece or parcel of ground is not mentioned or described in the said Commission, but is comprised and contained in the said Map or Plan thereunto annexed, marked (X. No. 7.). And it is further ordered, adjudged and decreed, that the said Wooneschunder Paul Chowdry, and the heirs and representatives of Ruttenchunder Paul Chowdry, deceased, do and shall hold and enjoy jointly, as members of a joint and undivided Hindoo family, as and for their six sixteenth parts or shares of the said lands and premises following; that is to say, No. 2, the Pergunnah Baugmarah, in the district of Nuddea and province of Bengal, comprising and consisting of forty-two villages, and the lands and grounds appertaining and belonging thereto. Of No. 4, the Dhee Unandpore and others in the Chucklah Sreenagore, in the same district and province, comprising and consisting of eighty three-villages, and not eighty-two villages, as in the said Commission, issued on the 31st day of July 1824, are mentioned; the twenty-five villages following; that is to say, Nij Donontpore Mallaypore Day, Poohoooreah Gungseroh Comer Goreeh Sorey Day, Govindoonagore, Nij Baluah Dangoh Panteh Potoh Babegoareah Soyah Dangha, Mooda Diobeehoondeeo Soree Dwar Casannee, Chattrah Baghee Beckrampore Mauleepootah, Callesanpooree, Cooporeebanghee Zoolsoroh, Sumobeah Juggutroy Gungapoores haut Coomarsatpore Radanagore Torampore, and the lands and grounds appertaining and belonging thereto. No. 8, the Turruff Moozeppore, in the same district and province, comprising and consisting of twenty-five villages, and the lands and grounds appertaining and belonging thereto. No. 9, the Dhee Rajahpore, in the same district and province, comprising and consisting of eighteen villages, and the lands and grounds appertaining and belonging thereto. Of No. 10, the Chucklah Dooleahpore and Dhee Kessunpore, in the same district and province, comprising and consisting of 149

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villages; and not 189 villages, as in the said Commission, issued on the 31st day of July 1824, are mentioned; the forty villages following; that is to say, Nij Doolaboona Row-atsoh Probungpore Setkoonder Nagore Pantch Barwoh Govindnagore Moororee bautry Mohescoor Deedlore Cosampore Bickenpore Dawoolay Dawool Drith Bhoowoleah Nij Battse Bando Ghatta Rogorampore, Banaborreah Chundertollah Goosary Mohepsorepore Bullubpore, Sitalpore Genopute Bankroh Gessereypore Gorra Khulley Noy Gotee Poora Kholly Mawjutanty Khoosalpore Austah Kholly Nedayah Chuck Doho Dorryapore Bosontpore Roodorpore Soondah Bareah Poleeah Poteeah Ramoh Ballubpore Raneyuagore, and the sixteen villages in Dhee Restnapore, including Bona Ranarainpore, and the lands and grounds appertaining and belonging thereto. Of No. 11, the Dhee Baguspore, in the Pergunnah Dantea and district of Lessore, in the same province, comprising and consisting of eighty-six and a half villages, and not of eighty-four villages, as in the said Commission, issued on the 31st day of July 1824, are mentioned; the thirty-six and a half villages following; that is to say, Nij Cosieppore Kismut-Cosieppore Bander Coloh Benodeahs half Puccekorahs Cankolan Luddhee Pasoh Bauuehpore Nij Tughorey Bistopore Bhopedan Suttaypore Bankroh Auleypore Mookoon-doopore Somekah Sookoorkolah Boeroorepoore, Nij Ronootorah Moorpoore, Aungabarrah, Soomosdepore, Aumaur Collypore Torajee Hurreah, Ghope Roshaupore Gourypore Bawoojooney Looghey Pookoriah Sankdoho, Tailcoopey Raurehporroh Sampire Dandpore Coolborriah Kismut, Cool Baireah, and the lands and grounds appertaining and belonging thereto. No. 48, the Lalook of Degulram, situate in the district of Nuddea, and twenty-four Pergunnahs in the province of Bengal, comprising and consisting of six villages, together with the lands and grounds belonging and appertaining thereto. Of No. 18, four upper-roomed messuages, tenements or dwelling-houses situate in Clive-street, in Calcutta, and province of Bengal; and of No. 56, eight buildings or godowns, lately erected and built at Clive-street, in Calcutta aforesaid; and all which houses and godowns in Clive-street aforesaid are comprised and contained in the Map or Plan annexed to the Return to the said Commission issued the 31st of July 1824, and marked (X.). No. 4, three upper-roomed houses and seven godowns, and one begah, fourteen cattahs and nine chittacks of ground, whereon the said last-mentioned houses and godowns are erected and built, and situate to the east of Clive-street aforesaid; and which said houses, godowns, and lands are in the said last-mentioned Map or Plan coloured green. No. 55, a piece or parcel of land or ground consisting of two cattahs and two chittacks, and not of two and a half cattahs, or thereabouts, as in the said Commission mentioned, situate in or near Nauths Baugaun-street, in Calcutta, in Bengal aforesaid; and which said piece or parcel of land is comprised and contained in the Map or Plan thereunto annexed, marked (X. No. 5), as is therein distinguished and marked by the figures (No. 55) written across the same number, twenty-one other upper-roomed messuages, tenements or dwelling-houses situated at Sootanooty aforesaid, called Sapoussess Bauty, together with one begah, six cattahs and five chittacks of ground, as in the said Commission mentioned, appertaining and belonging thereto, and which said last-mentioned houses and lands are comprised and contained in the Map or Plan thereunto annexed, marked (X. No. 6), and are therein distinguished and marked by the figures (No. 20) written across the same. And it is further ordered, adjudged and decreed,

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creed, that the said Isserchunder Paul Chowdry, and the heirs and representatives of Premchunder Paul Chowdry, and the said Woomeschunder Paul Chowdry, and the heirs and representatives of Ruttenschunder Paul Chowdry, deceased, do execute each to the other all such proper deeds and conveyances of the aforesaid lands and premises so allotted to them, the said Isserchunder Paul Chowdry and the heirs and representatives of the said Premchunder Paul Chowdry, and the said Woomeschunder Paul Chowdry, and the heirs and representatives of Ruttenschunder Paul Chowdry, as may be necessary for vesting the same in them jointly, their heirs, representatives and assigns, as aforesaid. And it is further ordered, that George Money, esquire, the Master of this Court, do settle such deeds and conveyances, in case the parties shall differ about the same; and that in the meantime the parties do hold and enjoy their respective shares so allotted to them as hereinbefore ordered and decreed, according to the said petition, and that each of the said parties do deliver to the other or others of them the title-deeds, which solely relate to the premises allotted to them respectively. And it is further ordered and decreed, that such deeds and conveyances as relate partly to the said premises allotted to the said Isserchunder Paul Chowdry and the heirs and representatives of the said Premchunder Paul Chowdry, and partly to the said premises allotted to the said Woomeschunder Paul Chowdry and the heirs and representatives of the said Ruttenschunder Paul Chowdry, be brought in and deposited in the office of the said Master of this Court for their mutual benefit, subject to the further order of this Court; and that all parties, at his or their own costs and charges and expenses, may be at liberty to have attested copies of all or any of such deeds, muniments and writings. And it is further ordered and decreed, that the costs of the said Commission of Partition shall be paid and borne by the parties in the proportion of their interests in the said property; that is to say, ten sixteenth parts or shares thereof by the said defendant, Isserchunder Paul Chowdry, and the heirs and representatives of the said Premchunder Paul Chowdry, deceased, and six sixteenth parts or shares thereof by the said Woomeschunder Paul Chowdry, and the heirs and representatives of the said Ruttenschunder Paul Chowdry, deceased. And this Court doth further order and decree, by and with the consent of the said Woomeschunder Paul Chowdry and Woolulmoney Dossee, the widow of Ruttenschunder Paul Chowdry, deceased, their advocates and attorneys in these causes, that James Weir Hogg, esquire, the Receiver of this Honourable Court, be, and he is hereby appointed, the receiver of the said six Annas share, allotted jointly to the said Woomeschunder Paul Chowdry and the heirs and representatives of the said Ruttenschunder Paul Chowdry, deceased, and that the said Isserchunder Paul Chowdry do, forthwith, deliver possession thereof to the said Receiver. And it is further ordered and decreed, that the said Receiver do and shall pay to the said Woomeschunder Paul Chowdry one moiety or half part or share of the rents, issues and profits of the six Annas share from time to time as the same shall be received by the said Receiver. And it is further ordered and decreed that it be, and it is hereby referred to George Money, esquire, the Master of this Court, to inquire and report whether any and what joint family-worship has hitherto been maintained and kept up at the family dwelling-house at Ranaghat, and whether or not, according to the religious laws and usages, it is fit and proper that such joint family-worship should be continued at the joint expense; and if the said Master shall report that

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&c.

Enclosure 2.  
in Letter from  
Bengal Board of  
Revenue.

such joint family-worship ought to be continued at the joint expense, that he do then report what sum ought to be set apart for the maintenance and performance of such worship. And this Court doth further order, that this decree shall be binding on the said infant defendant, Gunganarain Paul Chowdry, unless he shall, within six months after he shall have attained his age of sixteen years, show unto this Court good cause to the contrary. And this Court doth further order and decree, that the said Master do make his report on the matters hereby referred to him on or before the second equity day of the next ensuing term. And this Court doth think fit to reserve, and doth hereby reserve, all further directions until after the said Master shall have made his report on the matters hereby referred to him; and in the mean time all parties are at liberty to apply to this Court from time to time as they may be advised. Witness, Sir Charles Edward Grey, Knight, Chief Justice at Fort William aforesaid, the 16th day of September, in the year of our Lord 1828.

Stacey, Attorney.

Tate Romatt, and Master Attorney.

Voe, Attorney.

(Signed) J. W. Hogg, Register.

A true Extract:

(Signed) J. W. Hogg, Register.

(Miscellaneous.)

No. 3.

LETTER from Board of Revenue, Lower Provinces, to Lord W. C. Bentinck, Governor-General in Council, &c. &c. &c., Fort William.

Board of Revenue, Lower Provinces,  
4th February 1829.

My LORD:

Board of Revenue  
to Governor-Gen.  
in Council.

In continuation of our Letter, dated the 24th ultimo, we have the honour to forward another communication, dated 2d instant, from the Receiver of the Supreme Court.

2. The lands referred to are advertised for sale for arrears of revenue; those in the Jessore district on the 5th instant, and those in the Nuddea district on the 12th instant; and under any circumstances they must, we are of opinion, be first responsible for the Government Revenue.

We have, &c.

(Signed) J. PATTLE,  
W. BLUNT.

(Enclosure.)

LETTER from E. Macnaghten, Esq., to G. A. Bushby, Esq., &c. &c. &c.

SIR:

Enclosure in No. 3

Will you have the goodness to inform me whether any thing has yet been settled regarding the subject of my Letter of the 23d ultimo?

I now find that the Collectors of Jessore and Nuddea have advertised for sale, on the 5th

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&c.

5th and 12th of this month, some part of the lands allotted, by the decree of the Supreme Court, to Woomeschunder Paul Chowdry, and to the heirs and representatives of Ruttenschunder Paul Chowdry, deceased, for arrears of Revenue due to Government.

Enclosure in No. 3.

I trust that, pending the reference to Government of my Letter of the 23d, the Board will direct the sale to be postponed.

I am, &c.

Court-house,  
3d of February 1829.

(Signed) E. MACNAGHTEN,  
Rec. Sup. Court.

No. 4.

LETTER from Mr. Secretary Mackenzie to J. Pearson, Esq., Advocate General.

SIR :

Council Chamber, 6 February 1829.

I am directed by the Right Honourable the Governor-General in Council to transmit to you the Papers noted in the margin,\* and to request that you will state your opinion, whether the Supreme Court has jurisdiction in cases touching the succession or transfer of real property in the Mofussil, and how far the judicial and Revenue officers of Government are bound to recognize the Receiver appointed by the Court in the case referred to in the above Correspondence.

Secretary to  
Government to  
Advocate-General.

2. You will perceive that the revenue of the estate referred to is in arrear, and consequently that an early reply to this reference is urgently required.

3. You will be pleased to return the above Papers with your reply.

I have, &c.

(Signed) H. MACKENZIE,  
Secretary to the Government.

No. 5.

LETTER from John Pearson, Esq., Advocate General, to Holt Mackenzie, Esq.,  
Secretary to Government.

SIR :

Fort William, 20 February 1829.

I have the honour to acknowledge the receipt of your Letter, in which you request my opinion whether the Supreme Court has jurisdiction in cases touching the succession or transfer of real property in the Mofussil, and how far the judicial and Revenue officers of Government are bound to recognize the Receiver appointed by the Court in the case referred to in the Correspondence forwarded to me.

Advocate-General  
to Secretary to  
Government.

2. The appointment of an European officer by the Supreme Court appears to me a circumstance of little moment in itself, and wholly distinct from the possession or occupation of land in the Mofussil, as the right to make such appointment depends upon the extent.

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&c

Advocate-General  
to Secretary to  
Government.

extent of the jurisdiction which the Supreme Court possesses; and I entertain very considerable doubts whether the Supreme Court was originally meant to possess any jurisdiction at all beyond the limits of Calcutta, except over British subjects, and certain other persons specified in the Acts of Parliament.

For it is not, I believe, pretended, that the actions which particularly relate to real property out of Calcutta, the action of ejectment, for example, can be brought in the Supreme Court, except in those cases where the lands have been in the occupation of a British subject; and it certainly appears an inconsistency that the same Court should, notwithstanding, be empowered to seize and sequester, or transfer or divide, the lands in the Mofussil.

3. The Supreme Court has, however, at all times, claimed and exercised this right, under the powers alleged to have been conferred by Acts of Parliament and the Charter granted by the Crown.

The statute 21 Geo. III. c. 70, s. 17, gives to it "full power and authority to hear and determine, in such manner as is provided for that purpose in the said Charter or Letters Patent, all and all manner of actions and suits against all and singular the inhabitants of the said city of Calcutta." And the 18th clause of the Letters Patent directs that the Supreme Court shall be a Court of Equity, and assimilates its power and authority to the Court of Chancery in England.

The process of the Court of Chancery was in its origin against the person, in order to enforce a decree; but in time, from experience of the evils attendant on this mode of proceeding, it had recourse to a species of process against the property itself, by means of the writs of sequestration.

The Supreme Court adopted these in conformity with the words which I have cited from the Charter; and by analogy with other steps taken in the English Court of Chancery, as well as to give effect to the peculiar incidents and tenures of land in this country, it has also issued, as in the case submitted to me, the writ of partition.

4. In this mode of considering the subject, I conceive that the Supreme Court is borne out by the expressions of the Charter, though (as I have intimated already) I am inclined to doubt whether any such power was originally meant to be given. It may be added, that by the Charter of Justice, sect. 9, it seems that the powers of the *Sheriff* are extended over Bengal, Behar and Orissa, though I think it probable that this was originally intended to reach only British subjects and their property; the case of property in the Mofussil in the hands of natives, inhabitants of Calcutta, not being in the contemplation of the framers of the Charter.

The power, however, has been exercised by the Supreme Court from the earliest times, and it is now too late, I conceive, to resist it with effect. At all events, the only regular mode of trying the question is by an appeal to the King in Council; and I ought to observe, that in many instances the decisions of the Supreme Court in circumstances similar to the present have been sent home upon appeal, and confirmed by the King in Council, without its appearing to have occurred to them that the Court had exceeded its powers.

5. In the mean time it appears to me, that the officers of revenue are not called upon to alter the mode of proceeding prescribed by the Regulations of Government, which have



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have the entire authority of laws in the Mofussil. They are indeed directed, in common with other persons, to be "aiding, assisting, and obedient in all things unto the said "Supreme Court of Judicature." But I do not conceive that this injunction would justify a disobedience of the Regulations of Government, merely because a party may infer that some of these Regulations are, in their consequences, inconsistent with the intention of the Supreme Court. I do not, however, perceive in what manner the judicial officers of Government can be affected by the present mode of proceeding in the Supreme Court.

6. At the same time, in looking at the strange and anomalous state of things in this country, arising from the various laws, regulations and institutions that exist, from the powers of the Supreme Court and of the General Government, distinct from and usually independent of each other, at the same time that they are in some measure concurrent, it is easy to see that an interference must occasionally take place, and it is clear that it is most desirable to avoid any unpleasant collision. I trust I shall be pardoned if I take the liberty of suggesting, that perhaps some plan may be devised to carry into effect the decrees of the Supreme Court, without interfering with the independent rights and powers of the Government. I am not sufficiently acquainted with the details of the establishments in the Mofussil to venture upon suggesting any project; but if a mode could be pointed out which should be at once efficient in itself and not objectionable to the Government, I trust that the Supreme Court (constituted as it is) would be desirous of acceding to it.

I have, &c.

(Signed)

JOHN PEARSON,

Advocate General.

LEGISLATIVE  
COUNCILS.  
&c.

Advocate-General  
to Secretary to  
Government.

## No. 6.

LETTER from E. Molony to the Board of Revenue, Lower Provinces.

GENTLEMEN:

Fort William, 23d February 1829.

I am directed by the Right Honourable the Governor General in Council to acknowledge the receipt of two letters from you, dated the 24th ultimo, and 4th instant, and, in reply, to communicate as follows:

Deputy-Secretary  
to Government to  
Board of Revenue.

2. His Lordship in Council is of opinion, that you should direct the Collectors who are concerned in the foregoing reference to act under the decree of the Supreme Court, and the application of the Receiver thereupon, in the same way as they would act under a similar decree passed by any of the Mofussil Courts.

3. The registry of the names of the complainants, in cases in which portions of Mehals have been awarded to them, will not, of course, exempt the whole estate from the responsibility which, under the Regulations of Government, attached to it for the punctual payment of the public revenue assessed on it. But your Board will, of course, be prepared to show any reasonable indulgence in respect to time; and should the parties desire to enter into separate engagements for the revenue chargeable upon their lands, they will apply for a regular butwarrah.

4. With



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&c

Deputy-Secretary  
to Government to  
Board of Revenue.

4. With regard to the Receiver of the Supreme Court having been vested with the management of the minor's estate, the Governor-General in Council is of opinion, that, the jurisdiction of the Court being admitted, the rule which restricted Europeans from holding lands or managing estates in the Mofussil, ought not to be considered applicable to that officer.

5. In regard to the jurisdiction of the Court of Wards as liable to be affected by the case, his Lordship in Council observes, that as the estate is joint undivided property, of which some of the sharers are majors, there can be no reasonable ground to apprehend collision on that score.

6. You are requested to issue to the several Collectors concerned in the present reference, such instructions as you may deem necessary to enable them to act in consonance with the above remarks and orders.

7. His Lordship in Council proposes to take into early consideration, the measures to be adopted for the purpose of obviating the inconveniences which are to be apprehended from the present state of the laws and practice of the Court.

I have, &c.

(Signed) E. MOLONY,  
Dep. Sec. to Gov.

P. S.—The original Papers which accompanied your Letter, under acknowledgment, are herewith returned.

#### No. 7.

LETTER from Board of Revenue, Fort William, to W. B. Bayley, Esq., Vice-President in Council, &c. &c. &c., Fort William.

Sudder Board of Revenue, Fort William,  
6th March 1829.

HONOURABLE SIR :

Board of Revenue  
to Vice-President  
in Council.

We have the honour to acknowledge the receipt of the orders of the Governor-General, conveyed to us in Mr. Deputy Secretary Molony's Letter, dated the 23d ultimo, on the subject of the application of the Receiver of the Supreme Court, submitted for the orders of Government, with our addresses of the 24th of January and 4th ultimo.

2. In conformity with those instructions, we have directed the local Collectors concerned in that reference to act under the decree of the Supreme Court, and the application of the Receiver thereupon, in the same way as they would act under a similar decree passed by any of the Mofussil Courts, and to register the names of the parties in the manner directed by the decree of the Court ; though we may here observe that no Mofussil Court can, under the provisions of Regulation V. 1827, appoint a manager to an estate, the selection and appointment of whom is, in all cases, vested in the Revenue authorities.

3. But as we are of opinion that great inconvenience is likely to result from the appointment of an European officer of the Supreme Court to collect the public Revenues, and as such officer is not, we conceive, amenable to the Mofussil Courts, or liable to the penalties

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penalties prescribed for undue exaction of rent, illegal distress, disobedience or resistance of process, or other act in violation of the Regulations prescribed for the realisation of the public Revenue, it may, we conceive, have been the intention only of the Supreme Court, that the Receiver should collect the surplus proceeds of the estate to which the proprietor or proprietors may be entitled in excess of the fixed demand of Government, and which we conceive it probable is the only portion of the assets of the estate to which the decree of the Court is intended to apply.

4. On this point, therefore, we would propose, with the sanction of Government, to apply for further information from the Receiver to the Supreme Court; likewise whether it is proposed to collect the rents by means of Native or European agency; also, to whom the Revenue authorities are to look for payment of the public dues, or to direct any prescribed process in case of default, should it for any reasons be deemed inexpedient to proceed to a sale of the lands in satisfaction of any demand of Government.

We have, &c.

(Signed) W. BLUNT.

LEGISLATIVE  
COUNCIL.  
&c

Board of Revenue  
to Vice-President  
in Council.

No. 8.

(Secret Department.)

MINUTE by Sir C. T. Metcalfe, dated 15 April 1829.

THE contention which has for some time past been in progress between the Government of Bombay and His Majesty's Court of Judicature at that Presidency, without any apparent prospect of termination, demands the serious consideration of the authorities at home, who may possess the means of rectifying an evil discreditable to our character and dangerous to our power in India.

Discreditable to our character in the estimation of the natives of India as all such discussions must necessarily be, and dangerous to our power, because inasmuch as that depends on the respect and awe entertained of us by the native population, nothing has so much contributed to confirm those sentiments as a belief in our perfect union among ourselves, and nothing can more certainly tend to shake them than the appearance of discord between our highest authorities.

It is therefore necessary to determine whether, in matters of doubtful dispute, the Government or the Court of Judicature at the several Presidencies shall be supreme; whether the Government must in every case submit to any exercise of judicial power which the Court may assume, or the Court be restrained by the will of the Government, whenever the latter may be sensible of political reasons of sufficient importance to induce its interference, either to resist a new assumption of power, or to suspend the exercise of one doubtful or dangerous, which may have been before admitted.

To me it seems quite clear, that the supreme power ought to rest with the Government; and that in any case in which the exercise of the powers of the Court might be deemed injurious to the safety or welfare of the state, the Government ought to possess authority to suspend the functions of the Court as regarding that particular case, and the Court be bound to acknowledge and abide by the restrictive power of the Government pending a reference to superior authority in England.

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The possession of such a power by the Government appears to be the more necessary in cases in which new and doubtful powers are assumed by the Court, such as have never been before exercised, and are disputed and denied by competent interpreters of the law.

In arguing for the possession of restrictive powers by the Government in India over the Court of Judicature, I only propose what, as I conceive, exists in every country in the world; a saving power in the Government for the benefit of the State over all parts of the governing machine, of which the judicial department is one.

There is no danger to the national power in England from an undue stretching of the authority of Courts of Justice. There is no probability there that the Courts can misunderstand their functions; but if there were any chances either of error or of mischief, the Legislature is at hand to restrain or rectify.

What the Legislature is to Courts of Justice in England, the local Government in India ought in reason to be to Courts here; that is temporarily, and until the result of a reference to England can be known. If not so perfect and satisfactory an instrument of control as the Imperial Legislature, it is the best that can be had on the spot. And unless it can be maintained that the Government must submit, whatever may be the consequences, to any extension of jurisdiction that any Court of its own pleasure may assume, it must follow that a provisional and temporary restrictive power ought to be vested in the Government; for it can never be supposed that a disgraceful contest between the two powers, as separate and opposed to each other, ought to be exhibited to conquered India; to excite the anxiety and fears of the well affected, and the hopes and ridicule of the disaffected and hostile.

When such a contest commences, there are no means of stopping it in the present state of relations between the Government and the Court. The Government cannot sacrifice its subjects to an assumption of power which it believes to be illegal. The Court having once declared the assumption to be legal, considers itself interdicted from rejecting any application founded thereon, and from listening to any compromise or suspension of the power. It regards and treats the members of the Government as so many culprits, who are punishable for contempt of the King's Bench. The feelings of the parties become engaged in the quarrel. Each thinks it dishonourable to yield. The Government will not give up its native subjects to laws and jurisdictions to which they have never before been held amenable. The Judge conceives that he is supporting the independence of the British Bench, and maintaining a praiseworthy contest against lawless interference. The struggle is interminable, and may be renewed continually by fresh cases involving the disputed point.

At this immense distance from the control of the Mother Country, there surely then ought to exist a local authority vested with power to put a stop to these intestine contentions. If it can be said with any justice that a Court of Law may put its authority to any extent, and that no apprehension of consequent mischief and danger can justify a Government in refusing obedience, then let it be determined, that the Government must, in all cases, submit to the will of the Court. It would be better that the supremacy of the Court should be acknowledged and known, than that room for contention should remain.

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There are, nevertheless, reasons why the supreme power should rest with the Government, and not with the Court.

The political power of a state, exercised by its Legislature, is everywhere superior to the judicial, which is subordinate, performing only the functions conferred on it by the former, which are liable to any modifications that the Legislature may enact.

Against this it may be urged, that the real Legislature of British India is the national Legislature in England, and not the local Government; but, on the other hand, the local Government, performing locally the functions of political administration, approaches nearest to the representation of the distant home Government, while the Judicial Court cannot properly represent the legislative power.

Moreover, the occasions on which the Government and the Court are likely to be involved in disputes, are when the Court is extending its own jurisdiction beyond its former limits, that is, assuming powers not before exercised. The check, therefore, ought to be vested elsewhere, for we know from experience that the Court is not likely to check itself; the exercise and extension of power being at all times enticing to human nature.

The Court in such cases may be said to be the aggressor, and the Government on the defensive. It is more equitable, therefore, that the Court should be required to pause, than that the Government should be compelled to submit to new assumptions.

No new assumption by the Court can take place, without drawing more within its jurisdiction our native subjects, already amenable to other Courts established for their protection. They can only look to the Government for defence against the exercise of power by an authority to which they have never considered themselves subject. They are entitled to this defence, and the Government ought to have the power of affording it.

The restraining power contended for herein on the part of the Government, should be exerted of course with due consideration and forbearance, and subject to serious responsibility.

If it were deemed inexpedient to confer it on the subordinate Government of each Presidency, it might be confined to the Supreme Government, or the exercise of it by the subordinate Governments might be subject to the confirmation and revision of the Supreme Government; which course would rectify the possible errors of local irritation, without impairing the efficiency of immediate remedy.

Next to the importance of preventing unseemly contention between independent British authorities in this distant region, by conferring somewhere the power of local supremacy pending a reference to England, it is very desirable that the powers to be exercised by His Majesty's Courts of Judicature, that is, the extent of their jurisdiction, should be accurately defined.

Out of the want of clear definition and of general understanding, arise all the disputes which take place; for respecting the acknowledged customary powers of the Courts there are no disputes.

It is unquestionably due to our native subjects, that they should be informed to what Courts and to what laws they are amenable. At present they are amenable to the Courts established in the provinces in which they reside, and subject to a modified code of native laws, both in civil and in criminal matters; but suddenly, by some legal hocus

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poets, incomprehensible to them; they find themselves dragged into the jurisdiction of the Court of English Law, armed with tremendous power, from which there is no reprieve, where they are beset by unintelligible forms and bewildering complexities, and ruined by intolerable expense.

It never could have been intended by the British Legislature, that our Indian subjects should be amenable to two sets of Courts and two codes of laws; but such is now the effect of the gradual extension of the jurisdiction of His Majesty's Courts, some of the steps in which have been imperceptible, or at least unnoticed.

When His Majesty's Supreme Court was first established in Bengal, it was understood that its civil jurisdiction extended to claims against the Company, and against British subjects, and to claims of British subjects against native subjects in cases wherein the latter had agreed to submit to its decision and its criminal jurisdiction, to British subjects, and to persons in the service of the Company, or of any British subject, at the time of the offence.

The establishment of this power, independent of the local Government, was soon followed by disputes, disreputable in their circumstances, and dangerous to the public safety.

The Court had not been long in the exercise of its functions, when it extended its practical jurisdiction indiscriminately to all natives; nothing more being necessary to procure a writ against any of them than an affidavit that the person sued was within the jurisdiction.

The collection of revenue and the administration of justice in the provinces, were obstructed by writs of *habeas corpus*, and prisoners brought up by these writs were set at liberty by the Court.

Neither the Government exercised by the Company, nor that of the Nawab of Moorshedabad, was respected. Both were declared subordinate to the Court. Had the usurped powers of the Court been allowed to proceed without check or opposition, the Government must have been destroyed.

The powers assumed, the pleas by which they were maintained, the tone of self superiority, and of contempt for the local Government, which mark the proceedings of the Court at that time, are remarkably similar to those which appear in the recent proceedings of the Court of Bombay.

The proceedings of the Supreme Court of Bengal having been loudly complained against, its powers were restrained by a subsequent enactment.

Since which, either from a better understanding of the intentions of the Legislature, or from mutual moderation in Governors and Judges, or from the submission of Government to gradual or quiet encroachments, until the present contention at Bombay, there has not been the same degree of misunderstanding and dispute regarding the powers of the King's Courts; but it is evident from what is now passing at that Presidency, and from what has before happened both at Madras and in Bengal, that the habits of discussion still exist in the undefined condition of the jurisdiction of all the Courts.

The Courts at Madras and Bombay were established at different periods, subsequently to that of the establishment of a Court in Bengal. The character of the Madras Court differs in some degree from that of the Calcutta Court, although intended avowedly

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avowedly to confer only the  
on the model of that of Madras.

The Bombay Charter is formed, I presume,

Besides jurisdiction over all British subjects, the Courts have an acknowledged jurisdiction over native subjects residing within the appointed limits of the several cities designated Presidencies; disputes which have occurred, and are likely to occur, refer to the extent of the Court's jurisdiction over native subjects beyond those limits.

We have seen a native of India, lately a servant of the king of Oude, but residing within the British frontier for refuge, arrested on a false allegation of debt, many hundred miles away from Calcutta, by an officer of the Supreme Court, and placed in the power of his pretended creditor and undoubted enemy, on some legal fiction of his being a constructive inhabitant of Calcutta, in consequence of dealings with parties residing there.

If such a plea brings natives within the jurisdiction of the Supreme Court, there is not a mercantile native residing in any part of India who is not amenable; for all of them have commercial agents or dealings in Calcutta.

To call any one a constructive inhabitant of Calcutta who has never been within many hundred miles of the place, whatever it may be in law, seems an outrage against common sense. And to arrest such a one at that distance by a writ from the Supreme Court, he never dreaming of his liability to such jurisdiction, being at the same time amenable to provincial Courts and provincial laws, must surely be considered as a gross violation of natural justice.

It may be reasonably presumed, that the Legislature did not intend to confer such jurisdiction on the Court; but we know that it has been assumed.

We have seen property seized in the most remote provinces under the Bengal Presidency, as the property of a bankrupt firm of Calcutta, and made over wholly to another firm of that place, on a bond; although creditors of the bankrupt firm, and claimants against it, were present in those provinces; although the transactions on which they claimed took place in those provinces; although the property seized was properly their own, never having been paid for; although they were entirely ignorant of the existence of those peculiar laws, which at once took away their property and deprived them of all means and all chance of recovering any part of the debts due to them. The awe of the Supreme Court deterred the local authorities from attempting to maintain the rights of the local creditors. Can any one say that this is justice to our native subjects, or that a Court, a thousand miles distant, ought to possess a jurisdiction so partial to the few, so destructive to the many?

We recently heard that a native not residing within the Court's jurisdiction, nor amenable to it, according to common understanding, on any other account, was to be tried before the King's Court, on the charge of a crime committed beyond the limits of the jurisdiction. It could not establish the principle, that all natives, notwithstanding those limits, might be brought before the Court for trial. I do not know how this matter stands, but it was certainly a new encroachment, and will form a precedent for further extension of jurisdiction.

We have still more recently had occasion to observe, that landed property in the provinces, beyond the limits of the Court's local jurisdiction, is somehow brought within its jurisdiction; that it is decreed away from one party to another, or attached and seques-

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tered at the Court's pleasure; and that European officers of the Court are appointed receivers of the rents, by which the regulations of the Government for the administration of the provinces are set at nought. It is the opinion of the Advocate-General, that the Legislature did not intend to confer on the Court the powers thus assumed, but that they have been too long exercised to be now successfully combated.

The instances abovementioned have occurred in the proceedings of the Calcutta Court, where we have undoubtedly able, upright, moderate and conciliatory Judges.

What is here required, is a clear definition of the extent of the Court's jurisdiction with regard to native subjects resident beyond the limits of its local jurisdiction; and it cannot be denied that this definition is necessary, unless it can be affirmed that it is just to expose our native subjects to the operation of two sets of laws, and of two independent jurisdictions.

The Court at Madras at one time assumed the power of executing its writs in foreign territories, acted on the assumption, and attempted to justify it by reference to its Charter. This erroneous conception of the Court's powers was reported to England. The opinion of high legal authorities was given against it, and communicated to the Judges at Madras. The pretension has not since been revived; but there is nothing to prevent its renewal, if adopted by any Judges in time present or to come.

The Madras Court has assumed the power of destroying the sovereign rights of the Government, by decreeing to others public Revenues granted by the Company to an individual. The exercise of this assumed power, if unresisted, might alienate in perpetuity the whole of the public Revenue, which, in virtue of its sovereign rights, the Government might grant in assignment, under limitations as to time and persons. Moreover, the sovereign acts of the Government in the disposal of its public Revenue beyond the limits of the Court's local jurisdiction, being once rendered liable to subversion by the fiat of the Court, no security for the Revenue or for the possession of India would remain. A limitation of the Court's powers on this subject, therefore, is also necessary.

At Bombay, the Court has, within my recollection, sent its bailiffs into a foreign territory to seize a subject of a foreign Government. No pretension of this kind, I imagine, could be maintained by any Court; it may therefore be supposed that the act was committed by mistake, owing to false swearing. And it is remarkable, with regard to the proceedings of the King's Courts in India, that any writ, however injurious to the individual affected by it, may be obtained by false swearing. Two persons have only to swear that a native is liable to the Court's jurisdiction, and he may be dragged to the Presidency from his home, distant a thousand miles, in a country and climate extremely different, although he be not in the slightest degree by law amenable to the Court's jurisdiction. This matter, in justice to our native subjects, certainly demands a remedy. Such are the forms or practice of the Court, that its most questionable powers, prior to trial, may be wielded with all their irresistibility at the direction of the attorneys, with little or no check, or even knowledge, on the part of the Judges.

One of the powers recently assumed by the Court at Bombay is that of releasing native convicts, condemned according to law by the Provincial Courts. This power being assumed, it is only necessary that one or two persons swear that such a one is illegally



illegally confined, and forthwith issues a writ of *habeas corpus*, addressed to the magistrate of the district, or the gaoler or some officer of the Provincial Court, ordering the bringing up of the convict before the King's Court. The return, that he has been sentenced to imprisonment by the Provincial Court is not deemed sufficient. The King's Court does not recognize the existence of any right in the Provincial Court to punish. It professes to know nothing of the powers of such a Court. The Provincial Court itself must come to trial. It must be proved to the satisfaction of His Majesty's Justices that such a Court exists and has a power to punish, and that the Government has the right to institute such a Court; else, without further ceremony, and as a matter of course, the prisoner is released.

The exercise of this power by the King's Court, with regard to prisoners sentenced by the judicial Courts established throughout the interior of British India, seems to be quite incompatible with the independent existence of those Courts. Either the King's Courts ought to be restrained from interfering with separate judicial institutions which they cannot efficiently control, or they ought to be connected and blended with those institutions in one united establishment for the due administration of justice. Their interference at present is neither necessary for justice, nor, if necessary for that purpose, could it be effectual, under the present system, over the immediate extent of territory subject to the Provincial Courts. It must now tend to produce mischievous counteraction, to bring into contempt the local Government and its judicial institutions, and to impair the administration of justice.

Similar powers were assumed by the King's Court when first established in Bengal. Prisoners of the Provincial Courts were then brought up in like manner by writs of *habeas corpus*, and released. But since the powers of the Court were restrained, the practice has ceased, and its assumption by the Court at Bombay does not profess to be founded on those precedents.

Another power assumed by the King's Court at Bombay, but resisted by the Government at that Presidency, is that of taking native wards out of the hands of their guardians and bringing them to the Presidency, to be disposed of at the pleasure of the King's Court; neither the wards nor their guardians being subject to its ordinary jurisdiction.

If the Court possess this power legally, there is not a ward in British India whose affairs may not be brought within its jurisdiction. Interested parties have only to swear that the ward is illegally detained by his guardian. The whole native property of our dominions may successively be drawn into the Chancery of the King's Court; the Court all the while acknowledging that its ordinary jurisdiction does not extend over the parties. What is the difference whether the jurisdiction be called ordinary or extraordinary, if it be assumed and exercised? If it had been intended that the natives of India and their property should be liable to the jurisdiction of the King's Court, they would not, it may be presumed, have been placed under a separate jurisdiction.

Every power exercised or assumed by the King's Court, or any other, is of course professedly and intentionally for the purpose of rendering justice or redressing a grievance; but it seems to be forgotten that an extension of jurisdiction over those not before amenable to it may be oppression instead of justice.

According to the present practice of the King's Courts, a native of the snowy mountains



tains of Himala, not amenable to the Court's jurisdiction, and utterly unconscious of the existence of such a Court, may be dragged a distance of 800 miles or more, to the swamps and jungles and stifling heat of Bengal, merely to show that he is not amenable to jurisdiction, and go back again, fortunate if his plea be admitted, and if he do not perish from the contrast of climate.

If it be deemed really necessary that our native subjects, without regard to distance of residences, should be amenable to the Court of English Law, rules ought to be framed to let them know clearly that they are so, or how they may become so.

But it ought never to be that the jurisdiction should remain undefined, and subject to unlimited extension at the pleasure of the Judges.

Who does not know that it is natural to human frailty to seek an increase of power? The Judges are generally well disposed to extend their jurisdiction. The barristers and Attornies of the Court have the strongest inducements of personal interest to urge the extension, as their profit and their livelihood depend on their quantity of business brought within the jurisdiction. In reason the Court ought not to have the power of determining its own jurisdiction; yet it holds its power in this respect to be absolute and indisputable.

There is at present a single Judge on the bench at Bombay. Whatever powers he may assume and exercise, he holds obedience to be due to his will as the law. The united opinions of all the Judges of the Calcutta Court, all the Judges of the Madras Court, and all the barristers of all the three Courts, would be of no avail against his single will. He is the only interpreter of the law in his own Court, and his opinion, even if against that of all the world besides, and although leading to the extension of his own powers, is to have despotic force, and to affect the condition of millions in the most important concerns of mortal life.

It is surely then necessary that the law should be so defined as to be universally understood, and as free as distinctness can make it from the possibility of misinterpretation.

It appears to me, from the foregoing statements and considerations, to be established, 1st. That it is necessary distinctly to define the jurisdiction of the King's Courts with regard to native subjects; 2d. That a supreme power, to prevent protracted disputes and collision between the Governments and the Courts in doubtful cases, ought to be vested either in the Governments or the Courts, and preferably in the former.

Before I submit in detail the suggestions which occur to me, with a view to these objects, I will venture to offer some remarks as to the jurisdiction actually possessed by the King's Courts under existing enactments and charters.

As there are differences of opinion on this question among judges and barristers learned in the law, it may seem presumptuous in one who has no pretensions to legal knowledge to form any opinion on the subject. But it rather appears to me, that there is from that circumstance encouragement for an unlearned man to seek the truth under the guidance of common sense, since it is manifest that there must be error, one way or the other, in the maze of technicality.

Sense and meaning are at the bottom of all legislation, however difficult it may subsequently be to discover them in the entanglements of professional language.

It seems to me, then, after an attentive perusal of the Acts and Charters relating to the

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the Courts of Calcutta, Madras and Bombay, combining the whole series of legislation on this subject, that the intention of the Legislature is clear and distinct.

According to this, I should say, that the jurisdiction of the Supreme Court extends over the following classes :

1. British subjects throughout India, in all matters civil or criminal ; By the British subjects wherever it is used in the enactments and Charters, native subjects are evidently meant to be excluded.

2. The inhabitants of Calcutta, Madras and Bombay, within fixed limits, whether natives or others, in all matters civil or criminal ; but natives in some civil matters to have justice administered according to Hindoo or Mahometan law.

3. Native subjects, servants of the Company, or of any British subject, for acts committed as such, with limitations in certain civil matters.

4. Native subjects, in civil matters, for transactions in which they have bound themselves by bond to be amenable to the King's Court.

All natives not included in either of the three classes above mentioned, seem to be exempt from the jurisdiction of the King's Court. If they are not so, it would be useless to specify those who are amenable. If not exempt, they would be more generally amenable than the inhabitants of Calcutta, Madras or Bombay, and the other classes of natives specified, because in that case they would be amenable without limitations, not being included in those classes, for whom limitations are provided. It is quite clear that this could not have been intended, and the only alternative is, that they are exempt, which appears to be the design of the Legislature.

Of the four classes above specified, as amenable to the King's Courts, the law seems sufficiently distinct regarding three.

There is no doubt that all British subjects are in every respect amenable, with certain specified exceptions.

There is no doubt that the law makes amenable for wrongs and trespasses native subjects in the service of the King or Company, or of British subjects, and generally in all criminal matters also.

There is no doubt that native subjects are made amenable by the law in civil transactions in which they bind themselves to be so.

There is no doubt that native subjects, inhabitants of Calcutta, Madras and Bombay, are amenable ; but with regard to this class, the powers of the Courts ought to be defined ; for no native, after proceedings which have taken place, can feel secure that he may be converted into an inhabitant of either of those Presidencies by some legal legerdemain, although he may never have been within a thousand miles distance of the place ; and there is no property in any part of British India that may not, by the extended construction apparently put on the law, be brought within the grasp of the King's Court. A distinct definition of the meaning intended by the Legislature to attach to the term inhabitant, would relieve our native subjects from much uncertainty and alarm which now prevail, from apprehension of their being made liable to the process of the Court.

The Court at Bombay draws a distinction between ordinary and extraordinary jurisdiction, and, on the ground of the latter, claims unlimited jurisdiction over all native subjects within the territories subject to Bombay.

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This claim seems to be founded on that part of the Charter of the Court which grants jurisdiction in the following terms:

" The Court invested with a jurisdiction similar to the jurisdiction of the King's Bench in England."

The above is the marginal note. The text is as follows:

" And it is our further will and pleasure, that the said Chief Justices shall severally and respectively be, and they are, all and every of them, hereby appointed to be Justices and Conservators of the Peace, and Coroners within and throughout the settlement of Bombay, and the town and island of Bombay, and the limits thereof, and the factories subordinate thereto, and all the territories which now are or hereafter may be subject to or dependent upon the Government of Bombay aforesaid, and to have such jurisdiction and authority as our Justices of our Court of King's Bench have and may lawfully exercise within that part of Great Britain called England, as far as circumstances will admit."

This paragraph describes the nature of the Court's jurisdiction, but does not define the persons over whom it extends. If all in the Charter relating to the Court's jurisdiction were contained in that paragraph, there could be no doubt that the intent of the Charter must have been to confer a jurisdiction similar to the jurisdiction of the King's Bench over all the territories of Bombay; but, taken with the other contents of the Charter, it seems equally clear to me, that the jurisdiction thus granted is only to be exercised over those who are declared to be subject to it. I proceed to that part of the Charter which defines the jurisdiction.

" The jurisdiction of the Court defined:

" And we do further direct, ordain and appoint, that the jurisdiction, powers and authorities of the said Supreme Court of Judicature at Bombay shall extend to all such persons as have been hereinbefore described and distinguished in our Charter of Justice for Bombay, by the appellation of British subjects, who shall reside within any of the factories subject to or dependent upon the Government of Bombay, and that the said Court shall be competent and effectual, and shall have full power and authority to hear and determine all suits and actions whatsoever against any of our said subjects, arising in territories subject to or dependent upon, or which hereafter shall be subject to or dependent upon the said Government, or within any of the dominions of the Native Princes of India in alliance with the said Government, or against any person or persons who, at the time when the cause of action shall have arisen, shall have been employed by, or shall have been, directly or indirectly, in the service of the said United Company, or any of the subjects of Us, Our heirs or successors; and the said Court, hereby established, shall have like power and authority to hear, try and determine all and all manner of civil suits and actions, which by the authority of any Act or Acts of Parliament, might have been heard, tried or determined by the said Mayor's Court at Bombay aforesaid, or which may now be heard, tried or determined by the said Court of the Recorder of Bombay; and all powers, authorities and jurisdictions, of what kind or nature soever, which, by any Act or Acts of Parliament, may be or are directed to be exercised by the said Mayor's Court, or by the said Court of the Recorder of Bombay, shall and may be as fully and effectually exercised

" by

" by the said Supreme Court of Judicature at Bombay, as the same might have been  
" exercised and enjoyed by the said Mayor's Court, or by the said Court of the  
" Recorder at Bombay."

It would be tedious to repeat the technical language of every section of the Charter regarding the jurisdiction. The next section to the one above quoted defines the jurisdiction as to the inhabitants of Bombay. All suits and actions brought against the inhabitants of Bombay to be determined by the Court; but in the cases of " Mahometans or Gentoos," their inheritance and succession to lands, rents and goods, and all matters of contract and dealing between party and party, to be determined by their respective laws and usages, or by such laws and usages as the same would have been determined by in a native Court; and when one of the parties shall be Mahometan or Gentoos, by the laws and usages of the defendant. In all suits to be determined by the laws and usages of the natives, the Court is to make such rules and orders for the conduct of the same, and to frame such process for the execution of judgments, sentences or decrees, as shall be most consonant to the religion and manners of the natives and their respective laws and usages. The same with regard to compelling the appearance of witnesses, and taking their examination, so that all suits may be conducted with as much ease and as little expense as shall be consistent with the attainment of substantial justice.

I will here pause to ask, if it was intended, as assumed by the Court at Bombay, to grant jurisdiction similar to that of the King's Bench over all native subjects under the Bombay Government, why was the jurisdiction of the Court defined and limited? If it was intended that the native inhabitants of the whole territory should be liable to the jurisdiction, why were the native inhabitants of Bombay specified? When so much care was taken to secure to the native inhabitants of Bombay, made liable to the jurisdiction, the benefit of their laws and usages, why was not the same privilege specifically extended to the inhabitants of the provinces, if it was not clearly intended to exclude them from the jurisdiction?

The Charter contains other limitations and restrictions regarding the jurisdiction of the Court over natives.

It specifies that no person shall be subject to the jurisdiction of the Court by reason of being a land-holder or land-owner, or farmer of land or of land-rent, &c. &c. It is unnecessary to detail all the specifications.

It may be asked, why it has been thought necessary specifically to exempt those persons? The cause is, that when the Supreme Court was first established in Bengal, the Judges chose to consider the persons so described as subject to the jurisdiction, on the plea of being servants of the Company. In order to correct this error, and rectify the mischief which had arisen and was sure always to arise from it, the declaration for their exemption was passed by the Legislature, not to exempt them from a jurisdiction to which native subjects generally were liable, but to prevent their being subjected on an erroneous pretence to a jurisdiction from which native subjects generally were free.

The character of this exemption and the circumstances which led to it are strong corroborations of the general freedom of native subjects from the jurisdiction.

Further, care is taken in the Charter to prevent those who, by reason of being servants of the Company or of British subjects, are liable to the jurisdiction, from subjection to it

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in any unnecessary manner or degree. Thus natives of this class having been previously by specific enactment brought under the jurisdiction, are again exempted from it, except in special cases; it being provided that they "shall not become subject to the jurisdiction of the Court in any matter of inheritance or succession to goods or lands, or in any matter of dealing or contract between party and party, except in action for wrongs or trespasses only."

What has been extracted from the Charter is sufficient to show that only certain classes of native subjects are liable to the jurisdiction of the King's Court, and that for all who are liable, care is taken to secure the enjoyment of their own laws and usages.

Is it possible then to suppose, that by any part of the Charter it was intended to grant powers to the Court which should completely nullify all the limitations and restrictions specifically imposed, render nugatory the protection granted to native subjects, and overthrow or bring into contempt the whole system of civil and criminal jurisprudence established for the administration of justice to our native subjects beyond the limits of the Court's local jurisdiction?

To me it seems impossible that the Charter was ever designed to confer such powers; and this opinion is corroborated by the preamble to the Charter, wherein it is stated that the jurisdiction of the Court, both as to native and British subjects, is to be subject to the same limitations, restrictions and control as the Supreme Court at Fort William is subject to; which can only, I conceive, mean, that the limitations, restrictions and control subsequently specified, and similar to those previously established in the Court at Fort William, are to be valid and binding; for if they are not, of what use are they? Is it likely that His Majesty, from whose royal authority the Charter issues, under authority from the Legislature, would have treated the natives of India with tantalization and ridicule, by granting them protection against the Court in one part of the Charter, and rendering it utterly void in another?

I have perused the Charter with attention, and the impression which it leaves on my mind is, that all the powers which it grants are given both with reference to the limitations and restrictions that it specifies. But if the technical language of the Charter be unintelligible to an unlearned man; if there be a hidden meaning which the learned alone can apprehend, giving unlimited unrestricted power, notwithstanding all the limitations and restrictions specified, then I would observe, that the King's Charter can only give what is authorized by a previous enactment of the Legislature. Unless, therefore, the powers claimed by the Court at Bombay, under the supposition that they are granted by the Charter, are conferred by some act of the Legislature, they are illegal, and consequently null and void.

I do not mean to admit that powers really are granted by the Charters which are not confirmed by the Legislature; on the contrary, I maintain the reverse. But if it be asserted that the powers claimed are given by the Charters, still they are illegal, unless it can be shown that they are consistent with the statutes. No powers granted by the Charters can abolish the restrictions fixed by the Legislature.

Those powers do not appear to be granted by any Act. As far as the intention of the Legislature can be understood from the enactments bearing on this subject, the jurisdiction of

of the King's Courts with regard to native subjects is strictly limited to certain specific classes.

The Charter of the Court in Bengal grants jurisdiction similar to that of the King's Bench, as well as the Bombay Charter. The Bengal Charter is founded on the 13th Geo. III., ch. 63, sec. 13, &c., which says nothing of that peculiar jurisdiction, but limits and defines the powers of the Court as to native subjects.

But the Court having misunderstood and exceeded its powers with regard to natives, a new enactment took place in sec. 9, ch. 70, 21st Geo. III., for removing all doubts concerning the persons subject to the jurisdiction of the said Supreme Court, by which it was enacted that persons, by reason of being land-owners, land-holders, farmers of land or land-rent, and other classes specified, should not be subject, that is, should not on that account be considered as servants of the Company, on which ground they had before been made amenable by the Court.

The same Act specifically gives jurisdiction to the Court over all the inhabitants of the city of Calcutta.

The Acts and Charters establishing the Courts at Madras and Bombay are similar to those which relate to the Court of Calcutta, with some differences immaterial as to the question now under discussion.

From the preceding details it appears to me to be established, that the jurisdiction of the Courts is limited by specific restrictions, and that they do not possess any extraordinary extended jurisdiction independent of the limitations prescribed by the Legislature.

Since writing the preceding, I have seen extracts from the opinion on this subject delivered from the bench by the Judge who now singly presides in the Bombay Court.

If I understand that opinion accurately, the learned Judge maintains that all the limitations and restrictions of jurisdiction contained in the Charter refer solely to civil jurisdiction, and that the criminal jurisdiction of the King's Court extends universally over all the inhabitants of the territory subject to the Presidency to which the Court may belong.

This interpretation of the law, if correct, seems at least to be new, for it has generally been understood that the jurisdiction of the Court in criminal matters is restricted with regard to natives; and the extension of the powers of the Court beyond its local limits, whenever so extended with regard to natives, has hitherto been defended on some plea that sought to bring them within the limitation of the jurisdiction.

It appears to me that that part of the Charter in which the jurisdiction of the Court is expressly defined, under this heading, "Jurisdiction of the Court defined," does not define the limitations and restrictions of the jurisdiction with regard to civil jurisdiction alone, but generally with regard to jurisdiction criminal as well as civil. After saying generally that the jurisdiction, powers and authorities of the Court shall extend to all British subjects, it proceeds to give power to hear and determine all suits and actions whatsoever, (therein, I presume, including criminal actions), against British subjects and natives in the service of the Company. It goes on to give power to hear, try and determine all civil actions (herein excluding all criminal actions) which might before have been tried by the Mayor's Court or Recorder's Court; it next confers all powers, authorities and jurisdictions formerly exercised by those Courts; and then gives power to hear and determine

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determine all suits and actions (including, I presume, criminal) against the inhabitants of Bombay.

It also appears in another part of the Charter, that the criminal jurisdiction of the Court is expressly limited to the "town and island of Bombay, and the limits thereof, and the factories subordinate thereto;" which criminal jurisdiction is specially extended, as respects British subjects, to acts committed either in the territories of Bombay or in the dominions of allied Native Princes; and this specific extension of it to British subjects beyond the local limits, seems clearly to exclude natives not within those limits. Such also has been the practical operation of the criminal jurisdiction of the Court hitherto.

If the judgment of the Judge at Bombay be right, all practice hitherto has been wrong; and it becomes the more necessary for the Legislature to determine what really is right. We cannot, in justice to our native subjects, leave them liable to two independent jurisdictions, or ignorant of what jurisdiction they are amenable to.

It is curious to observe how this claim to universal criminal jurisdiction has commenced its operation; the Judge who asserts it admitting at the same time that the civil jurisdiction of the Court, with regard to natives, is limited. The operation of this claimed criminal jurisdiction, is to drag a ward from the protection or control of his guardian, and bring the ward and his affairs into Court. There is not an estate belonging to any minor, throughout all India, that might not, by this sort of criminal jurisdiction, be swallowed up by the officers and practitioners of the King's Court.

Enough, I trust, has been said to show that we are bound in duty to give to our native Indian subjects greater certainty as to the jurisdiction to which they are amenable, and greater security against liability to two independent jurisdictions, than they now enjoy.

With a view to promote this object, I shall proceed to submit for consideration two schemes for the regulation of the jurisdiction of the King's Courts in India; one to explain and define it, under a supposition that the Legislature has always regarded the King's Courts as having general jurisdiction, with regard to British subjects, but with regard to natives, a jurisdiction limited according to classes and locality; the other to amalgamate the King's Courts with the Provincial Courts of Judicature, in the case of its being deemed expedient to abolish the existence of separate and independent jurisdictions for different classes of subjects.

With reference to the first of these suppositions, the jurisdiction of the King's Court regarding British subjects, as at present understood, does not absolutely need alteration. They are liable universally to both civil and criminal jurisdiction. Only, as to acts committed in the territories of Native Princes, it ought to be declared, in order to prevent the recurrence of such a claim as was once set up by the Madras Court, that the Courts "have no legal authority to cause writs or process of any kind, issued against "European-born British subjects, or natives of the British territories in the service of the "East-India Company, to be executed by arrest of persons, seizure of property, or any "other compulsory method within the dominions of Native Princes in alliance with the "British Government in India." This was the opinion given by His Majesty's Attorney General (the late Lord Gifford), His Majesty's Solicitor General (the present Lord Chancellor),



Chancellor), and the Honourable Company's Solicitor, Mr. Bosanquet, when called on in consequence of the Madras Court.

The jurisdiction as to natives in the Company's service seems sufficiently defined, and may remain as it is. It is hard on natives in the Company's service, that they should be amenable to two independent jurisdictions, and not obviously necessary; but as the Legislature has declared them to be subject to the jurisdiction of the King's Court, under certain limitations as to civil suits, the case is clear, and the exercise of the power is not open to dispute.

With respect also to natives in civil actions, regarding transactions in which they have bound themselves to be amenable to the Court, there is no room to doubt.

But it will be necessary to define more clearly the jurisdiction over the natives, inhabitants of Calcutta, Madras and Bombay, that is, over natives residing within the limits of the local jurisdiction of the Court at each Presidency.

Actual inhabitants within those limits must of course be considered fully amenable in both civil and criminal matters, with the privileges nevertheless, as to their own laws and usages, provided by the enactments of the Legislature and the Charters of the Courts.

Persons residing elsewhere, who may formerly have resided within the local limits, must be amenable for acts committed during their residence within the limits, but ought not to be so for acts committed within the jurisdiction of the Provincial Courts, or elsewhere beyond the limits of the Royal Court's jurisdiction.

Persons who have never resided within the limits ought not to be liable to arrest, nor generally amenable to the Court's jurisdiction, on the plea of being inhabitants, on account of transactions of a pecuniary nature within the limits in which they may be said to have been concerned. Nevertheless, for pecuniary transactions on their behalf within the limits, any property within the limits, which such persons may possess, ought to be liable; due notice being given of any suit, in order that the party concerned may answer to it at his option, or allow it to be decided on the evidence of the plaintiff. But property beyond the limits ought not, I conceive, in such cases to be liable to the Court's jurisdiction; it being, nevertheless, liable to the jurisdiction of the provinces in which it may be situated, for transactions within the jurisdiction of the King's Court.

The liability of persons and property, with respect to jurisdiction, ought generally, I conceive, to be determined by residence and locality. The course sometimes pursued by the King's Court would set such a consideration at defiance. We have seen, as before mentioned, a man arrested as an inhabitant of Calcutta, at a distance of seven or eight hundred miles, who never, perhaps, had been much nearer, and certainly never had been an inhabitant, for a matter of some curiosity sent to him from Calcutta by the party who caused and superintended his arrest, on the plea that he was an inhabitant of Calcutta, in consequence of having property, and employing agents in commercial dealings. It seems absolutely necessary that our native subjects should be protected against such proceedings; for which purpose I have proposed the restrictions above stated.

With respect to the property of persons, British subjects or others, by law fully amenable to the King's Court, their property, wherever situated within the British territories, must, I conclude, be liable; but the process of the Court regarding such property ought

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not to be executed by its own officers, but by the local Magistrate; and rules ought to be made to preclude the officers of the King's Court from proceeding beyond its local limits, and to make the local Magistrates its instruments for carrying into effect its lawful orders, regarding persons or property liable to its jurisdiction, although residing or situated beyond the local limits thereof. The sending of the officers of the King's Court into districts where there is another jurisdiction, is useless in itself, and attended with considerable inconvenience and mischief, by causing the appearance of a double jurisdiction.

No native ought to be dragged from a distance to show whether he is or is not liable to the jurisdiction of the King's Court. It is a grievous oppression that persons not subject to the jurisdiction may be arrested and brought before the Court from any distance, before they can show that they are not amenable. This evil might be remedied by making the local Magistrate in each district the channel of executing the Court's writs, and by giving him power to submit the excuses of any native denying the jurisdiction, and to try and report on the question of jurisdiction on the spot, under the Court's orders, abiding, nevertheless, by the Court's decision on his report.

The decrees or writs of the King's Court ought not, beyond its own local jurisdiction, to interfere with the previous decrees of the Provincial or District Court of any other local jurisdiction; as such interference must have the effect of bringing the local jurisdiction, and the authority from which it emanates, into contempt. Of course, no decrees of the local jurisdiction can set aside those of the King's Court previously issued, if directed against persons legally amenable.

It ought to be the duty of local authorities to bring to the notice of Government any instance within their jurisdictions of act of encroachment by the King's Court beyond its known and acknowledged powers. The Government, if it entertain the same opinion, ought to have the power of calling the attention of the King's Court to the subject, either through the Advocate General or some other channel. The Court ought to be bound to listen to the reference, and explain the grounds of its proceedings; and if the Government should notwithstanding remain convinced of the illegality of the supposed extension of the Court's powers, it ought to have the right to appeal to the King in Council, or other competent tribunal, and in a case which it may judge to be of sufficient importance, the power of arresting the progress of the encroachment pending the result of the appeal.

The powers recently claimed by the King's Court at Bombay, but more generally supposed not to have been intended by the Legislature, ought to be distinctly denied, and a clear definition made of all the powers to be exercised and enjoyed by the King's Court.

The rules and provisions herein proposed, would, I trust, afford that protection to our native subjects which we are bound to give them against uncertainty of jurisdiction and undefined extension of the powers of Courts to which they are not supposed to be amenable.

There is another portion of our subjects, partly of European and partly of Asiatic extraction, commonly called East-Indians, whose situation is peculiar. The law regards them

them as natives; but in religion, education, language and habits, they assimilate with British subjects.

At present the East-Indians are, as natives, subject to the jurisdiction within the limits of which they reside. With regard to civil suits and minor criminal offences, not subject to severe or lengthened punishment, this arrangement seems unobjectionable; but with regard to capital crimes, or such as are liable to exemplary punishment, I am of opinion that they ought to be put on the same footing as British subjects; and to prevent confusion, this might be done generally as to criminal jurisdiction.

The criminal law in force in our provincial judicature, although modified by our regulations, is mainly Mahometan. That Christian Judges should try Hindoo prisoners according to Mahometan law, seems sufficiently absurd; but that Christian Judges of British blood should try Christians of British extraction by Mahometan law, seems, if possible, still more strange; and therefore I think that it would be better if East-Indians, as to criminal jurisdiction, were put on the footing of British subjects.

I am also of opinion, that for property situated beyond the limits of the local jurisdiction of the King's Court, British subjects ought to be liable in civil suits to the jurisdiction of the Courts of Judicature established in the provinces, with regard to transactions committed within that jurisdiction, without any impediment to their full subjection to the jurisdiction of the King's Court. In other words, that all property and transactions should be liable to the jurisdiction within which they may be situated or performed.

I have said all that at present occurs to me, regarding the regulations of that state of jurisdiction in India, as to the King's Courts, which is at present supposed to exist, according to the provisions of the Legislature. I now proceed to advert to the supposition of a change, by which the judicature of India, instead of being divided into separate and independent jurisdictions, might be amalgamated in one.

Such a change, when judged fit, it will be best to introduce gradually.

The connexion between the two jurisdictions might in the first instance be established by making His Majesty's Supreme Court at each Presidency the highest Court in civil and criminal judicature for all the territories of such Presidency; that is, what the Sudder Dewanny and Nizamut Adawlut is now.

In that case, the Sudder Adawlut at each Presidency might be abolished; and its judicial duties transferred to the Supreme Court, with such modifications as might be requisite.

It would then be proper that the selection of Judges for the Supreme Court should be partly, as at present, from barristers of the English, Irish, or Indian bar, and partly from Judges practised in the judicature of India, and acquainted with the language, laws, and usages of the natives.

It is surprising that a knowledge of any language spoken by the natives has never been considered a necessary qualification for a Judge on the bench of a King's Court in India. There has consequently scarcely ever been an instance of its being in the power of a Judge to understand what is said by the native witnesses and prisoners; and this defect generally extends to the barristers and officers of the Court, as well as to the Judges.

Supposing a Supreme Court to be constituted as above suggested, much of the duties which

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which the King's Court has now to perform, might be transferred to an inferior Court at each Presidency, the more important duties being retained in the Supreme Court.

The jurisdiction and powers of the Supreme Court might be exercised every where through local Courts and authorities.

At first the local Courts would have no more power or jurisdiction over British subjects than they possess at present; but as occasion might arise, from time to time, for extending their powers, authority ought to be vested in the Supreme Government in concert with the Supreme Court, under the control of the Legislature, for conferring such powers as might be necessary for the due administration of justice, and for modifying and regulating the jurisdiction, practice and proceedings of these Courts, as might be most expedient, securing to British subjects, as much as possible, the enjoyment of their own laws, and always the right of trial by jury in criminal cases, and extending the same right to native subjects as soon as it could be done with the prospect of benefit; securing to them also their own laws and usages; and when, in contention between two parties of different persuasions, any doubtful point should turn on the difference of laws, the preference might be given to those of the defendant.

It would be presumptuous in me to attempt to describe all the subsidiary alterations that might, in process of time, follow the change proposed. All that I aim at is, to convey the impression that such a change, if ever deemed desirable, might be effected by a gradual introduction of improvement, without the convulsive destruction of that system of judicature to which our native subjects are accustomed.

I proposed to record this Minute in the Secret Department, on account of the delicate nature of the discussion which it embraces.

Its main purpose is to invite attention to the necessity of defining distinctly the powers to be exercised by the King's Courts with regard to native subjects, and of vesting in some authority in India, power to prevent the occurrence or stop the progress of any dispute, on a doubtful question, between the Governments and the Courts at the several Presidencies, pending a reference to England for final decision.

(Signed) C. T. METCALFE.

15 April 1829.

No. 9.

(Secret Department.)

MINUTE by Sir C. T. Metcalfe; dated 2 May 1829.

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THE immediate cause of the difference between the Government of Bombay and His Majesty's Court of Judicature at that Presidency has been the issuing of certain writs of *habeas corpus*.

The writ in one case was addressed to persons in the service of the Company, and therefore subject to the Court's jurisdiction. In another case to a native, not liable to the jurisdiction, according to the belief hitherto generally entertained.

This difference between the writs has not influenced the proceedings either of the Government or of the Court of Bombay.

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The Government has rested its opposition on political grounds, without reference to the comparative legality of the Court's proceedings in the two cases.

The Court, on the other hand, has declared that it derives its power equally, in both cases, from the same clause of its Charter, and that if it does not possess the power in both cases, it does not in either.

To those, however, who believe that the grant of the powers of the Court of King's Bench is with reference to the limitations imposed on jurisdiction, and not independent thereof, there must appear a considerable difference between the two writs.

In this view of the case, a writ of *habeas corpus*, addressed to any person, native or European, in the Company's service, must seem to be legal, and within the competence of the Court, however inconvenient and mischievous its operation may be, while a similar writ addressed to a native not subject to the ordinary jurisdiction must be considered illegal, and of course beyond the Court's power.

With regard to the last species of jurisdiction claimed now, it is supposed for the first time, I have ventured before to observe, that its existence is incompatible with the preservation of that separate jurisdiction of the Company's Courts which has hitherto prevailed without question, and that it would be extremely unjust to subject the natives to two jurisdictions and two codes of laws. Unless, therefore, it be intended to establish the King's Court universally and exclusively, the extended jurisdiction now asserted ought to be prohibited by the Legislature.

My present object in adding a few remarks to my former Minute, is to bring under consideration the necessity of regulating the exercise of the power supposed to reside in the King's Courts, of issuing writs of *habeas corpus* addressed to persons liable to the jurisdiction, when that power is exercised in behalf of the convicts duly tried and condemned in the Company's Courts, or of state prisoners detained for the public safety.

The Legislature cannot have intended that the King's Courts should throw open all the provincial gaols, and release all the prisoners sentenced by the Company's Courts; and it is quite clear that the exercise of such a power would effectually destroy good order in the Company's territories, and render its Courts utterly useless and contemptible.

Admitting that the King's Courts do possess the power of issuing writs of *habeas corpus* to persons liable to their jurisdiction, as no provision has been made for securing the jurisdiction of the Company's Courts against violation by that process, it is fair to conclude, that the possibility of such a collision has been overlooked by the Legislature.

The proceedings of His Majesty's Court of Bombay have now shown that it is necessary to guard against this evil.

The remedy is simple and easy. It is only necessary to declare on the part of the Legislature, that a statement describing the prisoners as duly convicted after trial, or as detained for trial by the Court to whose jurisdiction they are liable, shall be good and sufficient return to a writ issued under such circumstances.

The same power which the Court at Bombay has exercised with regard to convicted criminals might be assumed; I know nothing to prevent it with respect to state prisoners:

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yet it is impossible that the Government, responsible for the public safety, could allow its state prisoners to be released. Supposing, therefore, a writ to be issued for bringing up the body of a state prisoner, a statement setting forth that he is confined as a state prisoner by order of the Government ought to be declared a sufficient return; and unless this be done, it seems most probable that a dispute will some day break out between the Government and the Court in consequence of a writ of *habeas corpus* to release a state prisoner.

This is a method recently brought to notice, by which the jurisdiction of the King's Courts is extended, contrary to the evident intentions of the Legislature, and with grievous injury to the native subjects not properly liable to their jurisdiction.

It consists in this: if a native succeeds to property within the Court's jurisdiction, to which he has never before been liable, he must take out a probate from the Court in order to enable him to obtain possession. So far is unobjectionable; but by so doing, he is made liable to the Court's jurisdiction, not with regard to that property alone, which would be right and just, but with regard to all property, wherever situated, although many hundred miles beyond the Court's jurisdiction.

This is the law as laid down by the Court at Madras.

The story of the Nawaub of Masulipatam is a sample of its practical effect. The Nawaub of Masulipatam and his family, residing 200 miles or more from Madras, were exempt from the jurisdiction of the King's Court. The old Nawaub died, leaving, besides his property situated beyond the Court's jurisdiction, a sum in the Company's Funds, which being within the jurisdiction could not be paid to any of his heirs without probate from the Court. This was taken out by the eldest son, the present Nawaub, who in consequence became fully liable to the jurisdiction. Various suits have been entered against him. They are not determined; but he is already ruined, and unable to pay the expenses of a tribunal into which he has been dragged without being conscious of his liability.

It is thus that the extension of the jurisdiction of the King's Court in India goes on increasing by the mere will of the Judges, without regard to the right and interests of our native subjects, whom it was manifestly the intention of the Legislature to exempt from that jurisdiction.

The remedy in cases of this kind seems obvious, and without difficulty. It is only to declare by a legislative enactment, that native subjects not liable to the jurisdiction of the King's Court, shall not become so in consequence of taking out a probate, except for that property alone for which they have recourse unavoidably to the Court's jurisdiction.

2 May 1829.

(Signed) C. T. METCALFE

No. 10.

NOTE by Mr. Holt Mackenzie.

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Note.

THE apprehensions of inconvenience from the interference of the Supreme Court with landed property in the interior of the country, seem to me to be somewhat exaggerated; and in the cases which have occurred, the trouble experienced would, I think, have been for the most part avoided, had the officers concerned possessed the information which a short experience will doubtless give. Still it seems to be certain, that without a complete and well-regulated concurrence of the two authorities, considerable inconvenience may be experienced; and if our officers have much to amend before their proceedings can secure the approval of men accustomed to the law of England, or can satisfy the just expectations of the people of India, it seems to be almost equally certain, that the King's Courts must be prepared to modify their forms and process with a liberal consideration of local peculiarities, if they would really render the extension of their jurisdiction a benefit to the country. Indeed, even in England the necessity of pretty extensive changes seems now to be generally recognized; and here we have of course none of those prepossessions in favour of the institutions of our country, which may there render it unadvisable to discard ancient usages, even when opposed to reason. We may be pretty sure that the prejudices of the people against any rules borrowed from the English code (if I may use a word which rather reminds us of what we have not, than describes what we have), will be vanquished with facility in proportion as that which we desire to introduce bears the character of simplicity and truth.

The time seems to be favourable for the attempt to amend what is inconvenient, to remove what is dangerous, and to reconcile what is discordant; since the Parliament of England must be prepared for change, and the Bench is so filled as to give the best promise that all necessary and expedient changes will be ably and cordially promoted.

I understand it to be clear, that the Supreme Court has jurisdiction over immoveable property in the interior of the country, in all cases in which the possessor of such property is personally subject to its jurisdiction. Its interference with such property is therefore likely to be considerably more extensive hereafter than it has been hitherto.

Let us then see how it will operate: First, as to land charged with a land revenue, or rent to Government.

Such land is liable to sale by the Revenue authorities, on any failure to pay the assessed revenue with punctuality. The holders of it are subject to various rules in regard to the appointment of the inferior agents of police, and of certain village officers of account. They are bound to render information on various occasions; they are required to aid in furnishing supplies to troops, and are liable to fines in default. Every zemindaree, or other fiscal division, for the rent or revenue of which a separate contract was entered into at the time of the permanent settlement, continues to be responsible for the whole of such revenue, until a regular division and apportionment are made, according to prescribed forms; provision being at the same time made to secure persons who have applied to have separate possession of their shares, from suffering by the default of their co-sharers pending the process of partition.

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Where distinct parcels of a property thus held of Government under a single lease are transferred, whether by decree of Court or by the act of individuals, the thing to be done is merely to determine what share of the aggregate sum annually payable to Government shall be charged to each parcel. Where the property of the co-sharers is joint, a partition involves the double process of distributing the parcels of land, and apportioning to each its due share of the Revenue with which the whole is burthened.

In all cases the decision of the question how the Government demand shall be apportioned, rests with the Revenue authorities; the reservation forming in the Lower Provinces a condition of the permanent settlement under which the Government compounded for its right of levying, as rent or revenue, a certain portion of the produce of every beegah not especially exempted. The law proceeds on the assumption that the interests of Government require the reserved revenue or rent to be equally apportioned, and that the Revenue authorities are best able to effect the object. And as the Courts of Adawlut had originally no jurisdiction in the matter of assessment, so they are still barred from taking cognizance of any question touching the apportionment of the assessed demand, to the several parcels into which a joint estate may be divided, or to each of several estates which by the permanent settlement were made subject to a common rent, but for which distinct engagements are now desired.

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It appears to be essential, that the officers of the Supreme Court, or the Receivers appointed by it, should attend to the above particulars.

There is otherwise considerable danger that the practical effect of orders intended to secure equal advantages to litigants may operate very differently, and that misapprehensions of our system may induce the penalty of public sale, to the great loss of the individuals whose interests it is desired to guard. For I do not suppose that any proceeding of the Supreme Court, or any other Court, in suits between individuals, can affect the process prescribed by Government for the realization of its reserved Revenue. And though the difficulties in which families are sometimes involved on the demise of their head, or by the dissensions of their members, ought not to be overlooked by our officers, even when the Government demand may be most light, still the exigencies of the public service must not be neglected.

I am not sure how far the subordinate tenantry are affected, when the owner of landed property in the interior becomes a ward of the Supreme Court, when a receiver is appointed, or when such property is sequestrated, or any process had implying the actual transfer of possession; but I presume that the Master in Equity, as well as persons (Natives or Europeans) acting under his authority, are only subject to the jurisdiction of the Court whose officer he is.† And possibly in all cases in which the process

\* These Letters are referred to by Mr. Ross.

† The under-written opinion of Mr. Strettell (if I understand it rightly) to convey this :-

*The Master in Chancery is only amenable to the Supreme Court for acts done by his order, by farmers and agents in charge of the lands of wards of the Supreme Court. Such farmers and agents are, however, liable to the jurisdiction of the Mofussil Courts,*

*Mr. Lewin is not in any manner subject to the jurisdiction of your Court, and cannot be proceeded against in it. I shewed the Petition to him, and he says he knows nothing about the transaction, and supposes it arises from some misconduct of the persons complained against, or their Master.*



process goes actually to give or disturb possession, the Court would claim jurisdiction over those whom it must regard as the tenants of the parties whose interests have been adjudged by it. Now, when we consider how hopeless it must be for a set of poor and ignorant cultivators to seek redress in that tribunal, the inconvenience of such a state of things must be admitted to be no slight evil. Still more if we recollect, that of the tenantry of a semindar a great proportion will be found holding, not in virtue of any contract with that person, but by a tenure independent of his will, subject to the payment merely of the revenue, which, but for its settlement, the Government would have been entitled to demand, and that consisting in many cases of a fixed money-rate, and still leaving to the cultivator a property more valuable than that of his superior. It seems to be a cruel injustice upon such persons, that any act or incident done by or affecting the man who happens to farm the revenue payable by them, though under a perpetual lease, should operate to deprive them, without their consent, of recourse for redress to the Court of this district.

Then, if it be lawful for our Country Courts to give to *A.*, in a suit with *B.*, property which the Supreme Court has given to *C.*, in a contest with *D.*, the poor ryots may, without a clear understanding between the tribunals, be subjected to two task-masters.

Lands exempted from the payment of Revenue are free from those causes of embarrassment which have their source in the rules prescribed for the security and punctual realization of the assessed demand of Government. But in other respects the same difficulties arise. And further, the question may occur, how, when such lands are occupied by an officer of the Supreme Court, or by a receiver appointed by it, the eventual claims of Government to the alienated revenue, supposing the title of exemption invalid, are to be determined. So also as to the assessment of lands held under temporary settlements by the owners.

The simplest preventative and remedy of the inconvenience to be apprehended from the above causes, would seem to be the following. In all cases in which the Supreme Court assume the management of any landed property in the interior through the Master or other officer, or constitute a receiver of the rents of such property, the Collector of the district should be appointed to that office; and besides being answerable to the Supreme Court, he should likewise be subject to the local tribunals, in the same way as he would be if ordered to attach an estate by any of the Adawlut.\* If thought advisable, the appeal may in such cases lie to the Supreme Court; for of the appellate jurisdiction of that Court, whether over Judges or Magistrates, or of the exercise of its powers in controlling and directing the European officers of Government, there is not, I think, any reasonable ground for jealousy. For one, at least, I should be glad to see their authority

(B.)

Courts, unless they can  
Master.

an authority from  
Sudderdt.

If they cannot show a proper authority for what they have  
done, they will of course be liable to your Court's decision  
against them; but if an authority from Mr. Lewin should  
I think the application should be against him in the  
Court.

21st Dec. 1812.

\* Though managing the estate, he might, of course, if thought necessary, account for and remit the rents to the Master, or any Receiver appointed by the Court.



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rity in such cases more frequently and extensively brought into action, though I might add the condition, that their process should be made simpler and less expensive; and I have little doubt that our judicial tribunals might be very much improved by placing the Supreme Court at their head, under laws which should combine the whole into one harmonious system.

In cases in which the Supreme Court may actually give possession to any individual, all that seems to be necessary is, that in respect to all suits by or against persons, other than the party against whom the process of that Court may have issued, or the agents or assignees of such party, the individual put in possession shall stand on the same footing as if he had acquired possession by a decree of the Adawlut; barring, of course, any questions touching the force of the Supreme Court's judgment or order in respect to the parties named in their writ.

The defect of the provision contained in the 107th section of the 53d of the late King, c. 155, which appears to have been held not to permit one British-born subject to be impleaded by another in the Country Courts, and under which it seems to be doubtful whether an executor is subject to the jurisdiction of these Courts, except for his own contracts, ought to be amended.

As to possible collision between the Courts in cases in which they have concurrent jurisdiction, I do not think the danger of serious evil is very great. Still it does seem to be a source of inconvenience that should be shut. But this can apparently be effected only in one of two ways. Either the Supreme Court should (which will never be) cease to have jurisdiction over immovable property in the interior, or, instead of standing, as it now does, alone, it must be made part of the general scheme for the administration of the judicial business of the country.

How the last alternative is best to be carried into effect, it would be impertinent in me to attempt to decide. My thoughts on the subject must necessarily be vague and little worth. But it may help to an understanding of the thing if I briefly put the cases that have occurred to me.

It has happened that opposite decisions have been passed by the Supreme Court and by the Sudder Dewanny Adawlut, regarding different portions of the same estate on grounds equally applicable to all. In the case I have immediately in view there was no collision, and it happened that the value of the thing in contest was such as to give an appeal from the judgment of both Courts to the King in Council. Even in such a case, however, it is rather discreditable, considering especially the fearful delay that seems to attend appeals to England, to have the highest tribunals of the country placed in such a predicament. The strength of our Government resting so much on our real or supposed concord, nothing is more to be deprecated than even the appearance of dissension. And it should be observed, that the circumstance of there being an appeal to England was accidental.

I see a case mentioned, in which a British subject, *A.*, having got possession of part of an estate, while a native, *B.*, had seized the rest; the former was impleaded by the latter in the Supreme Court, the latter by the former in the Zillah Court, each in his own forum, without any assurance of consistency of decision.

The next case that occurs to me was that of a person holding possession under a decree  
of.

of the Zillah Court being ousted by an order of the Supreme Court passed *ex parte*; the possessor having failed to appear and plead the decree under which he held.

We lately saw a case in which a native of rank would, but for the illegal interference of the local officers, have been dragged nearly a thousand miles down to Calcutta, to contest a demand of an inconsiderable sum of money, which, if due, could easily have been recovered on the spot, and for which security ten times over would readily have been given.

The jurisdiction asserted by the Bombay Court appears to leave little exempt from it.

It seems to be somewhat questionable whether false swearing in the Sudder Dewanny and Nizamut Adawlut would be punishable as perjury by the Supreme Court; and it seems to be clear that oaths are frequently taken judicially, and on the most material points at issue, which would not be punished.

The power given to the Sudder Court of enforcing process within the limits of Calcutta has, in numerous cases, been found to be insufficient.

The criminal jurisdiction of the Country Courts over British subjects being confined to cases of assault and trespass, is manifestly inadequate to the exigencies that must arise under an extended resort of British subjects to the interior, to say nothing of difficulties arising out of the mere wording of the provisions applicable to the case.

In the distant provinces many offences indeed must remain unpunished, rather than the offenders, the complainants, and the witnesses, be transmitted many hundred miles to an uncongenial climate; and Justices of the Peace, who as zillah or city Magistrates exercise all their powers under the control of the Circuit Judges, are, in that capacity, freed from any control but that of the Supreme Court.

Now, as to persons, supposing the Supreme Court to retain its original cognizance of all suits now cognizable by it, would it not be practicable to define its jurisdiction by a system of registry, partly imperative, partly optional, so that every one should know precisely whether he stood in that predicament; and that the Judges and officers of the Supreme Court might likewise know whether their writs could properly be issued against the parties named in them?

If this cannot be done, may not our Mofussil Courts be most advantageously employed by the Supreme Court as Commissioners of Inquiry and Means Process and Execution, with the power of investigating the facts necessary to determine the point (it would be no serious evil if now and then the jurisdiction were disallowed erroneously), and with authority to take bail, and to do all that is necessary to insure an appearance, and the execution of the ultimate decree?

To a native, ignorant of our ways, filled possibly with groundless terrors of a strange tribunal (let us not flatter ourselves that there is no reason for so general a dread), justly alarmed at the prospect of being transported to a country of which the people are hateful, the climate noxious, the food unwholesome, the very water tainted (so Bengal presents itself to many of the inhabitants of Hindoostan), it is no small evil that the question of jurisdiction cannot be determined by some such process, and that he is liable to be suddenly called to answer in a distant tribunal, of whose existence he may then first have heard, and whose process is full of mystery and affright. Might not the

Mr. I

(F.)

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Magistrate of each city or zillah be the Sheriff of the same, with enlarged powers and discretion, if we must have a Sheriff?

Without some such scheme, it seems to be impossible but that natives must be frequently surprised, and the process of the Supreme Court may, through the chicanery of the Bengalese, be rendered a source of intolerable oppression.

It seems to me, that in all cases wherein the party impleaded may not be an European-born British subject or a settled resident of Calcutta (these classes could easily be defined), the question of jurisdiction should be taken up by the Court without any pleading of the party; he being, of course, still at liberty to plead that process should not issue out of Calcutta, unless the plaintiff's evidence (supposing it not to be contradicted) establish the fact, and that when issued it should be directed to the Judge or Magistrate of the district empowered as above to take security under the directions of the Supreme Court.

(H.) In suits for land, all process should, I think, be served through the local Courts, who might, perhaps with advantage, be required to make a return of any decrees or orders that might have been passed relative to the property in contest, touching either the complainant or defendant. Nothing is to be watched so jealously as *ex parte* decisions; for it seems to be certain, that in this country it will never do for Justice blindly to hold the scales, in the confidence that each party will throw into them every thing that can weigh in his favour.

Such a principle may be safe and wise in England, because we have there freedom and knowledge, community of language, publicity of proceedings, the fellowship of man with man, the thousand social ties that link a population accustomed to self-government, and knit together by the institutions through which the work of government is done; but if laws written in monkish Latin or barbarous French were administered to Saxon serfs by their Norman conquerors, nay, where an English Court is carried among Highlanders, or Irishmen, Judges must, I apprehend, have all their eyes about them, unless they be content that the forms of law shall cover the most shocking injustice.

(I.) In cases where there is a concurrent jurisdiction, would it be impossible or difficult to constitute a special Court or Chamber for the final decision of them, subject, if thought proper, to an appeal to England? Might not two Sudder Judges be in such case associated with the Supreme Court? or might the Chief Justice and one of the Puisne Judges of that Court, with a single Judge of the Sudder, constitute a suitable tribunal, using in all cases, at least as extensively as possible, the District Court for the first trial of the points at issue?

We should thus apparently guard against collision and contradiction; we should unite the local knowledge of our service with the legal wisdom of the King's Judges. The latter might gain something in the way of information; the former could not fail to derive much valuable instruction.

(K.) As to the punishment of offences committed by British subjects in the interior of the country, the main difficulty probably would be the reluctance of our countrymen here and at home to give up the privilege of trial by jury. It would not however, I imagine, be very difficult to constitute a Jury, say of four or five persons, at each of the principal towns (Meerut, Delhi, Agra, Furruckabad, Bareilly, Allahabad, Benares, Patna, Moorshadabad,

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shedabad, Dacca, Chittagong), and three Judges or Justices of the Peace might assemble to hold the Sessions.

To that Sessions there might lie an appeal from sentences passed by single Justices of Peace, and in the most serious cases there might be an appeal from the Sessions to the Supreme Court; that Court, with or without a Jury, to be vested with the power of confirming or reversing convictions, and in the case of acquittals, of annulling the proceeding of the Sessions, and either ordering a new trial, or directing the parties to be sent for trial to Calcutta.

I suppose there would be little difficulty in obtaining from Parliament authority for the Governor-General in Council, with the concurrence of the Supreme Court, to make the necessary provisions for the enforcement of the process of all our Courts in Calcutta or elsewhere, and for enabling all Boards and Commissions acting judicially under the warrant of the Government, in cases within their competence, to restrain contempts by moderate fines, and to bring to punishment, by indictment in the Supreme Court, persons guilty of swearing falsely before them to matters essential to the issue of the cases so investigated by them.

Whether Parliament would consent to give to Government a general power of legislation, is more doubtful; yet assuredly it is a little unreasonable that the Government should possess and exercise so large a power of legislating for many millions of natives (I do not deny that the function is somewhat too easily exercised), and that so much difficulty should exist in providing the laws necessary for the small number of British-born subjects resident in India, and the comparatively limited population of Calcutta.

It would not, I think, be difficult to constitute a suitable legislative council, if it be not thought right to give the power to Government. A veto, I suppose, will at once be allowed to the Governor-General. In such a council the Judges of the Supreme Court ought surely to take part; for their co-operation would in many respects be eminently useful; and it does not appear to me that any of the reasons which may be urged against the union of judicial and legislative powers, possess much force under the actual circumstances of this country.

But I have already written more than enough in a paper, of which the object is to bring out the points requiring to be settled, rather than to attempt to describe the means of settling them. I shall only therefore observe generally, that the number \* and nature of questions

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Note.

(L.)

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\* See especially Correspondences regarding the Mutiny Act, the Navigation Laws, the Slave Trade Act, the Revenue Powers of Government, the Marriage Act, and I might, I believe, say every Act relating to the country.

The following points requiring to be settled occur to me, in addition to what I have above stated; many others might, I imagine, be added:—Relation of the Government to the foreign Settlements in peace, or when captured in war; Law of Inheritance for country-born Christians of various parentage; Modification of Hindoo and Moslem Laws, as applicable to Calcutta; Recovery of small Debts from European British subjects living in the Mofussil, within ten miles of Calcutta; Nature of the interest possessed by British subjects in various kinds of immovable property; Administration to Estates of Hindoos and Moslems residing in Calcutta; Execution of decrees passed by the Country Courts, and of Process generally within Calcutta; Exemplification of ditto; Enforcement of Security Bonds and the like, given by British-born subjects in suits before the Country Courts; Examination of Witnesses at a distance, on the principles of 13 Geo. III., c. 68, s. 40, &c.; 24 Geo. III., c. 25, s. 79.

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questions which have arisen out of the parliamentary provisions relating to this country, and the doubts and difficulties which have practically embarrassed the Government, are such as appear conclusively to show the necessity of there being vested in some local authority legislative powers similar to those enjoyed in many of the Colonies. In truth, perhaps no appeal to facts can in such a case be necessary. It is enough to observe, that even in cases in which Parliament legislates with the fullest information, almost every new provision induces the necessity of some fresh enactment to amend or explain, to admit, that in relation to this country it must generally proceed on very imperfect information, and to recollect the distance and delay that impede the correction of what is wrong, or the explanation of what is doubtful.

(Signed) HOLT MACKENZIE.

No. 11.

NOTE by Mr. W. H. Macnaghten ; dated 9 April 1829.

Mr. Macnaghten's  
Note.

I HAVE read with much attention Mr. Mackenzie's Minute relative to the jurisdiction of the King's and Company's Courts. The question now under the consideration of Government originated, I believe, in the appointment by the Supreme Court of a Receiver to a portion of an estate situated in Nuddea, and other districts, which portion had been decreed by that authority to be the property of two individuals, one of whom is a minor. The Receiver so appointed was an European British subject ; and the Judge of Nuddea, entertaining doubts as to the legality of the appointment, referred the question to the Sudder Dewanny Adawlut, by which Court it was submitted to Government. The Governor-General in Council having determined the rule which restricts Europeans from holding lands or managing estates in the Mofussil, ought not to be considered applicable to a Receiver appointed by the Supreme Court, the original question is set at rest ; but others have arisen out of it which have been discussed by Mr. Mackenzie, and which I shall here briefly notice.

In the first place, an apprehension seems to be entertained, that the extension of the Supreme Court's jurisdiction to landed property situated in the Mofussil is calculated to have an injurious effect on the Revenue of the State. But how this effect is to be produced from such a cause I cannot perceive. Take the case we have before us. The property under litigation in the Supreme Court we will suppose to have been a joint estate, belonging to Ruttenchunder Paul Chowdry and Premchunder Paul Chowdry. Subsequently to the death of these two individuals, the heirs of one of them attempt to take possession of the entire property. They are sued by the heirs of the other in the Supreme Court, and the plaintiffs obtain a decree for a six Annah share. The lands of which that six Annah share is to consist are specified in the decree ; and an order is passed, that they shall be held by the plaintiffs as a separate estate. In this there is no attempt at interference with the fiscal authorities or the revenue dues of Government. The Receiver of the Supreme Court, on behalf of those for whom he collects, applies to the proper quarter for a registry of the names of the decree holders, with a view to give effect to the provisions

sions of the judgment. The act of the Court in distributing the parcels of land among the co-sharers, neither does nor is intended to affect the clear and indefeasible right of Government to realize by the authorized process the rent leviable on the entire estate.

In the event of any arrears accruing on either of the portions specified in the decree, the estate is of course liable to sale; and this, indeed, seems to have been actually threatened with regard to certain parts of the estate situated in the districts of Jessore and Nuddea. The only means by which the Government revenue could be affected, would be by a depreciation of property occasioned by the assignment to one co-sharer of too great a portion with reference to the share of Government Revenue contributed by him. But this evil would soon cure itself. The suffering co-sharer would, it may be supposed, not delay long in applying for a butwarra of the estate; and on a division being made, the Collector is authorized and required to assess the parcel divided off with its due share of the revenue with which the whole estate is burthened. If there is any inequality in the assessment, the fault does not lie with the Supreme Court. But there might be cases in which, from minority or other disqualification, mischief might arise from the least delay in the application of the remedy; for this reason, and because it seems to me a plan in itself simple, efficacious and unobjectionable, I think that a rule should be made, that whenever the Supreme Court decree a portion of an estate, and actually parcel it off, as in the present instance, the division should be looked upon, to all intents and purposes, as if it were a butwarra made by the Collector, and that the assessment should be laid on the several portions accordingly. The Supreme Court would, I feel convinced, readily give the necessary instructions to their officer to furnish the Sudder Board with copies of all their decrees affecting landed property situated in the Mofussil; and when a Receiver is appointed, he should be required to name the individual or individuals whom he may delegate to make the collections.

The next difficulty started seems to me to exist nowhere but in imagination. It is apprehended that the individual delegated by the Receiver to collect the rents would be amenable only to the jurisdiction of the Supreme Court. But why should this be the case? The Supreme Court in appointing a Receiver, never contemplated that his delegate should be "*legis solutus*," or exempt from responsibility to the local authorities. Suppose that the parties in whose favour the decree had been passed were neither of them disqualified, and that the Supreme Court had adjudged possession to them; in that case it would not be pretended, that the judgment was meant to exempt the parties from any liability to which they were subject before; neither in this case, by the appointment of a Receiver to act for the parties, was anything more contemplated than that he should be guided in his proceedings by the same rules as are applicable to the parties themselves. The Supreme Court would no more interfere in the one case than in the other. If the officers of their Receiver misconduct themselves in the interior, either by commission or omission, that Court would unquestionably allow the local law to take its course in the same way as if the parties themselves had been put in possession under the decree. I happen to know, that very lately, within the jurisdiction of Baraset, several people belonging to the Receiver's delegate were seized and put in gaol on a charge of affray; but the Receiver never dreamt of applying to the Supreme Court, nor supposed that the jurisdiction of Mofussil authorities could for a moment be disputed. Had the Receiver ap-  
pointed

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pointed an European British subject to collect the rents, the case would have been different. This we may be assured he would never do for his own sake; and if this were done, the Government would always be able to counteract the evil by refusing a license to reside, in the event of security not being furnished for the performance of all that is required from the land-holders.

The entire fallacy seems to consist in the supposition that the Supreme Court, in adjudicating the transfer of property situated in the Mofussil, necessarily alters the laws to which such property is subject, and that, in appointing an officer of their own to receive the rents, they necessarily authorise a deviation from the established modes of collection. I feel it quite impossible to argue against this doctrine, or to suggest any remedy for an evil the existence of which there is no reason to presume. The question, as far as it affects lands held rent-free, seems to me to be equally simple. The Supreme Court does not, in any instance, determine the question as to the validity of the tenure. It merely goes the length of determining, that the right of *A.* is superior to that of *B.*, without in any manner deciding that there is an indefeasible right in either. Denying as I do the mischief, it is hardly requisite to discuss the efficacy of the suggested remedy of appointing the several Collectors to the office of Receiver; but I shall merely mention, as one of the grand objections to this system, that it would entail the performance of duties in their nature frequently conflicting; and that the Collector, in his capacity of a servant of the state, might often be called on to act in a manner prejudicial to the interests of the individual whose estate is confided to his management; for the Government, I presume, would hardly concede to an estate so circumstanced, the privilege of exemption from sale, on account of arrears.

With reference to the defect noticed of the provision contained in the 107th Section of the 53d of the late King, c. 155, which has been held not to permit one British-born subject to be impleaded by another in the Country Courts, it is sufficient to observe, that constructions have been given both ways by successive Advocate Generals, though it is certainly desirable that the law should be settled in one way or the other. There is little danger, I think, to be apprehended from collision between the King's and Company's Courts, in cases in which they have concurrent jurisdiction. The Company's Courts would be prohibited by our regulations from hearing a suit which had already been determined by a competent authority, as the Supreme Court must be admitted to be; and in deference to an established and well-known maxim of jurisprudence, the Supreme Court would regard as *res judicata* a matter which had been determined by one of the Company's Courts. Where concurrent jurisdictions exist, there must always be danger of conflicting judgments. To limit the jurisdiction of the Supreme Court to the area comprised within the Mahratta Ditch, would certainly be a royal road to simplicity; but I do not think that this specific would be either very consonant to the inclination of the Judges of that Court, or just to the claims of its suitors. It would hardly be equitable to allow a man to enter into all kinds of commercial engagements, and to exempt his property from the liability to which he has subjected it, simply because it does not happen to be in the very spot where the contract may have been entered into. In truth, it is very difficult in any country where there is a multiplicity of jurisdictions to prevent their clashing. In Mr. Brougham's Speech on the present State of the Law in England, there



there is an amusing and instructive account of the conflict of the King's Bench and Common Pleas, and of the competition of the three Courts. If the Supreme Court of Judicature in this country grasps at jurisdiction, it is not singular in its propensity.

The Sudder Dewanny Adawlut has lately consulted the Advocate General as to their power of punishing for contempt an European, who sent into the Court a libel on the Judges, the offence being of course committed in Calcutta. His reply has not yet been received ; but should it be in the affirmative, I believe the Court have it in contemplation to suggest the enactment of a regulation, extending their powers of punishment in such cases ; for though the existing penalties are sufficient perhaps to deter natives from the commission of this offence, yet they are clearly insufficient to restrain the wealthy and litigious European from attempting to browbeat and insult the Judges, whose decisions may not be exactly conformable to his cupidity. I am not aware that in any other respect the powers given to the Sudder Court by Act of Parliament for enforcing their process are inadequate. Mr. Mackenzie seems to think that false swearing in the Sudder Dewanny and Nizamut Adawlut would not be punishable as perjury by the Supreme Court. I do not know on what this opinion may be founded, but a former Advocate General, Mr. R. Smith, distinctly declared in a communication to this Court, dated the 2d January 1812, that the offence in question would be so punishable.

To establish a system of registry for persons subject to the jurisdiction of the Supreme Court, on the principle suggested by Mr. Mackenzie, would, I think, be extremely difficult. Every man must necessarily be entitled to plead in bar of the jurisdiction. It would be unjust, nay intolerable, to deprive a party sued of this right, because he had been registered on a summary and *ex parte* inquiry ; and if this were not done, what would be the use of the registry ?

The objections to employing our local judicial officers in aid of the process of the Supreme Court, as it is at present constituted, appear to me quite insurmountable. In the first place, they positively want the leisure ; and, in the second place, from their ignorance of technicalities, they would be perpetually committing blunders, and involving themselves and the Government in embarrassment and confusion. To meet the existing difficulties, it appears to me, that no unobjectionable scheme can ever be devised, so long as the Mofussil Courts are subject to one authority, and the Court at the Presidency to another. Were India transferred to the Crown, the simplest plan apparently would be to take away from the Supreme Court all native jurisdiction, confining them to cases in which Europeans are concerned, and giving to the present Sudder Adawlut, under the designation of the Supreme Native Court, exclusive jurisdiction in cases concerning natives, whether in or out of Calcutta. The consideration of this, however, and of the other points adverted to at the conclusion of Mr. Mackenzie's Paper, would require infinitely more leisure than I can at present devote to the task. I therefore return all the documents, with these hurried observations, as I despair of being able to offer, within a moderate period, any suggestions calculated to be conducive to practical utility.

April 9, 1829.

(Signed) W. H. MACNAGHTEN.



NOTE by Mr. J. W. Hogg; dated 17 May 1829.

I do not find among these papers any representation of any Collector or Zillah Judge, stating any evil that has actually arisen from the appointment by the Supreme Court of a Receiver of the rents of lands in the interior.

That power has been exercised by the Court for a period of forty years and upwards, and it seems strange that no causes of loss to the public revenue or injury to private individuals have been adduced. I myself have a pretty accurate knowledge of the proceedings of the Supreme Court for the last thirteen years. During all that time the Receiver has had under his charge various lands in the Mofussil; yet, till now, there has been no difficulty, embarrassment or complaint.

And be it remembered, that the attention of Government has not been drawn to the subject by any practical inconvenience that has actually been experienced, but by the refusal of the Mofussil authorities to recognize the Receiver, or afford him the usual aid in the discharge of his duty; assigning as their reasons various ills that must inevitably result from such a measure, but which have been averted for nearly half a century.

I confess, that on perusing the papers, the first thing that struck me was, the absence of facts from which arguments could be fairly drawn, or remedies suggested. All is speculation; a host of imaginary perils are conjured up, which are difficult to combat, because they are unreal.

With respect to the jurisdiction of the Supreme Court over lands in the Mofussil, it is now much too late to agitate that question, except by application to the Legislatures. I can well understand the grounds on which it might have been contended, when the Court was first established, that it ought not to exercise any jurisdiction over lands in the interior; and, circumstanced as the country then was, many arguments might have been adduced that now are no longer applicable. But when the jurisdiction in certain cases is conceded, I am unable to understand how it can be contended that the Court in such cases cannot appoint a Receiver, which is only the exercise of a power incidental, if not essential, to jurisdiction. The Court which can adjudicate as to the right, title, and inheritance to landed property, must, of necessity, have the power to appoint a Receiver to collect the rents, and protect the property pending the litigation.

In India the local Government is now affording increased facilities to Europeans to reside and hold lands in the Mofussil. At home, by the late Insolvent Act, the whole property of the insolvent is vested in the assignee named by the Court, and no distinction is made between a house in Calcutta and a talook in the Mofussil; and under the provisions of this Act, extensive estates must often be vested in the assignee, with power not only to collect the rents, but to sell the interest of the insolvent. Surely then this is not the time to contend that no officer appointed by the Supreme Court ought to be permitted to collect the rents of lands in the Mofussil, or to urge that such an interference would be incompatible with the interests of the Government and the safety of the public.

\* The first danger apprehended is, loss to the public revenue. I confess I am wholly unable to understand how injury or danger can possibly accrue to the public revenue from such a cause.

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When the Court appoints a Receiver, that officer is empowered to collect the rents then due and to accrue due, in the same manner that the proprietor himself could collect them. He is bound to discharge the Government revenue out of such rents, when collected; and if the revenue should not be paid, the lands are as liable to sale in the hands of the Receiver, as in the possession of the native proprietor. Where then is the danger or difficulty? Is not the payment of the revenue more secure, from the very circumstance of the rents being collected by a responsible public officer, who is personally liable, and can be summarily punished for misconduct? Refer to all the cases where Receivers have been appointed, and let me ask if, in any single instance, the revenue has been unpaid, or any loss otherwise sustained by Government? If the Mofussil authorities will only aid the Receiver in the discharge of his duties, the payment of the Revenue will be as certain as if the rents were paid into the Public Treasury.

It does not appear to me that any new regulation need be framed. I would suggest, that when a Receiver is appointed by the Supreme Court, he should be directed to file with the Secretary to the Sudder Board an office-copy of the order, or ordering part of the decree whereby he is appointed, and wherein the lands and premises are set forth; and the Sudder Board can issue to the local authorities the necessary instructions to recognize the appointment of the Receiver, and to afford him the usual aid in collecting the rents.

In like manner, as to partitions, let the same force be given to a partition made by the Supreme Court as to one made by the local authorities; and let the parties have a like liberty to register their separate shares in their separate names, and to call upon the Collector, in the usual form, to allot to each share the proper portion of Government revenue. The decree of the Supreme Court allots and sets out in severalty to each the share to which he is entitled, but it in nowise affects, or can affect, the right of Government to collect the revenue, nor the mode of enforcing payment of it.

It would be a hardship if, after a family had separated, the share of one should be sold for the default of another; and this has accordingly been provided against by the regulation enabling the parties to call on the Collector to apportion the Revenue; and I cannot see why this indulgence (if indulgence it can be termed) should not be conceded to the parties where the partition has been made by the decree of the Supreme Court.

The party wishing to have the decree recognized and acted upon in the Mofussil, might be required to file an office-copy of the ordering part of the decree with the Sudder Board, who could issue the necessary orders. Indeed, what I have suggested is only that effect should be given to the decrees of a Court of competent jurisdiction.

In the Supreme Court no matter can be litigated that has already been determined by any Zillah Judge or Court of competent authority; and the decree or judgment of such Judge or Court could be pleaded in bar of any suit or proceeding in the Supreme Court relative to the same subject matter.

I have heard it complained, that there is not entire reciprocity in enforcing decrees and judgments, and I admit the truth of the observation; but this arises from the different constitution and powers of the Courts, and does not depend on the will of the Judges that preside. By Charter, the process of the Supreme Court runs through the pro-

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vinces, and the Court enforces its own decrees and judgments by its own process, in the execution of which all local authorities are required to be aiding and assisting. Not so with the Country Courts; their process (except as provided for by statute) cannot be executed within Calcutta; and a party seeking to enforce a Mofussil decree in Calcutta, must sue upon that decree, which will be recognised and enforced by the Supreme Court.

I have suggested, that the Receiver should file a copy of the decree or order, whereby he is appointed, with the Sudder Board, rather than forward it to the Collector and Zillah Judge, because it appears to me to be the course most simple, and the least likely to induce collusion. If the lands were situated in different districts, the estate would be put to great expense, if it were necessary to send a copy of the decree or order to each different authority; and these authorities would probably rather receive their instructions from the Sudder Board than from any other quarter.

I shall now notice the second objection, which, if well founded, would indeed be most serious.

It is supposed that the native managers and mooctears appointed by the Receiver may plunder and oppress with impunity, being exempt from the authority of the Mofussil Courts, and that the suffering ryots are remediless, unless they undertake a pilgrimage to Calcutta, surmounting all the prejudices and braving all the horrors so glowingly portrayed by my friend Mr. Mackenzie. Every native appointed by the Receiver is as amenable to the country Courts for every act of violence or extortion as any individual in the districts; and if the Receiver himself were there, and should so conduct himself, he would, in my opinion, be as liable to the authority of the Zillah Magistrate as any other European.

There is a clear and marked distinction between that which is done in virtue of office, and outrage committed under mere colour and pretence of office. It would not be competent to the Zillah Judge, or Collector, to say to a mooctear duly appointed by the Receiver: "We shall not recognize you on your authority, or permit you to collect the rents." But it would be competent to the Mofussil authorities to prevent that mooctear from exacting more than the ryots were bound to pay, or to punish him for any acts of violence or oppression he might commit.

I cannot see how there can be any extortion under such circumstances. If the Ryots will not pay, the mooctear must apply to the Judge, who will only pronounce his decree for the amount actually due. The mooctear cannot receive without the aid of the Mofussil process; and if he should attempt to take the law into his own hands, he would be liable to punishment like any other wrongdoer.

Lands in the Mofussil, when under the charge of a Receiver, are generally let on farm to natives, who are of course in all respects in the situation of the proprietors, entitled to the same remedies, and subject to the same liabilities. In the case which called for the present discussion, I, being then Receiver, determined not to let on farm, for special reasons. The parties on whose behalf I was acting, having been excluded from all enjoyment of the joint family property, were unable to afford me any information respecting the parcels allotted to them, and I therefore wished to retain the lands under my own management, until I could ascertain their value, and be able to form an opinion

as to the biddings when they were put up to farm. Besides, I had reason to believe, that if the lands were then put up to farm, the eldest member of the family would himself take them in the name of some dependent, for the very purpose of defeating the object of the Court in ordering those parcels to be severed from the rest of the family property.

Unless some such special reasons compel the Receiver to undertake the trouble of managing by his own mootears, he will, in all cases, let to farm, as most for the benefit of those interested, and less troublesome to himself. While I held the office of Receiver, I was appointed Committee of the estate of Juddoonaut Baboo, a lunatic, then confined for debt in the great gaol in Calcutta. He had large landed estates, but had long been greatly embarrassed, and his affairs were in the greatest confusion. He had let a great part of his own property on puttnee, and had taken many talooks from others on the same tenure, which much increased the difficulty of management. As I did not know when the man might be restored to reason, I considered it my duty not to farm the talooks, but to retain them in my own management, that I might be able to restore them to the proprietor on his recovery; and I accordingly collected myself by mootears. I applied to the different Mofussil authorities, particularly in Zillah Hooghly, from whom I received the most ready and courteous assistance, and was able to discharge my duty without any collision or difficulty.

It is suggested, that by the appointment of a Receiver all the ryots on the estate become amenable to the Supreme Court. It is not so; they are not liable further than every native or other person, who opposes the process of the Court, is liable to answer for the contempt.

If the Ryots, after knowledge of the order appointing the Receiver, were to pay to another, an attachment might issue against them; but no such process has ever issued, or been applied for by any Receiver, to my knowledge. I do not think that it would answer practically to appoint the Collector the Receiver of the Court for the lands within his district. Where the lands were situated in different districts, there would be many Receivers, all officers of the Court, and thereby subject to its orders, in a way that would necessarily interfere with their public duty.

I believe I have noticed all the dangers and difficulties alleged as likely to accrue from the appointment of an officer of the Supreme Court to be Receiver of the rents of lands in the Mofussil, and I have suggested what occurred to me as sufficient to remove every real difficulty. I shall now briefly advert to some of the general suggestions of Mr. Mackenzie; and I feel I shall find it easier to point out objections to what has been proposed, than to originate any thing better myself.

The liability of any person to the jurisdiction of the Supreme Court, at any stated time, is a mixed question of law and fact, which can only be determined by the Court itself. No system of registry could be of any avail, because there could be no competent authority to determine the question at the time of registry; and if then determined as to any individual, that same person might be differently circumstanced on the following day, and be either free from past or subject to new liability.

The liability of any person to the jurisdiction depends upon what is variable, and therefore cannot be measured by any fixed standard.

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Mr. Mackenzie is in error in supposing that the process of the Supreme Court can issue against any person without previous inquiry as to his being subject to the jurisdiction. No process can issue against any person, not even against a British-born subject, without an affidavit stating the party to be subject to the jurisdiction, and in what manner.

This is the only precaution that can be taken to avoid an abuse of the process; and the party may afterwards appear, and deny his liability, and that issue will be tried before the merits of the case are gone into.

With reference to an observation in one of the accompanying Papers, I may here say, that a native resident in the Mofussil is not subject to the jurisdiction of the Supreme Court by reason of his having land or houses in Calcutta. It is true that the title to such property within Calcutta could only be determined by the Supreme Court; and so far, but no farther, can the proprietor be said to be subject to the jurisdiction. For example: *A.*, a Hindoo, resides at Patna, and has neither a family dwelling-house nor house of business in Calcutta; he has however land in Calcutta, which is wrongfully entered upon, and possessed by *B.*; *A.* must seek his redress against *B.* in the Supreme Court, and *B.* may bring a cross suit against *A.*, who will be held amenable, and compelled to answer as to *that subject matter* respecting which he himself sues, but not otherwise.

I think it is to be regretted, that when the Court was first established, the Judges did not frame processes suitable to the country, instead of adopting all the English forms. The attention of the present Judges is now directed to this subject, and rules have already been framed, and will shortly be published, that will obviate many of the inconveniences arising from executing the process at a distance from Calcutta. While English law and practice prevail in the Supreme Court, I fear there would be an insuperable objection to the plan of referring the whole or any part of the matters in issue to the decision of any of the Mofussil Courts. The Supreme Court must itself hear and determine all matters before it, and has no power to delegate any part of that authority to any other tribunal. Wherever there are Courts of concurrent jurisdiction, there must sometimes be conflicting decisions. This may be lamented, but must be submitted to, as an evil incident to human frailty throughout the world, and not peculiar to this country or its institutions.

I think it would be most desirable if the process of the Court could be executed by the local authorities, and I believe it is so at Madras, beyond a certain distance from the Presidency. I fear, however, there would be some difficulty, from the wording of the Calcutta Charter, which directs all process to be executed by the Sheriff. The Sheriff might appoint any number of deputies, but he would be legally responsible for the acts of each; and the inadvertence of any one of the number might fix him with liability to an extent that would deter any one from accepting the office.

I was not aware that doubts had been entertained, whether a person swearing falsely in any judicial proceeding in the Sudder Dewanny could be indicted for perjury in the Supreme Court; and as the grounds of such doubts are not mentioned, I am unable to meet them. Some case may probably have been submitted to the Advocate General, where the swearing, though false, did not amount to the legal offence of perjury; and hence may have arisen the general doubts; but if the false swearing was wilful, and material,

material to any matter pending judicially before the Sudder Dewanny or Nizamut Adawlut, I should think that the offender could be indicted for perjury in the Supreme Court.

Some legislative provision must soon be made for the trial and punishment of all offences and crimes committed by British subjects in the interior, and at a distance from Calcutta. It is almost a denial of justice to require a prosecutor and all his witnesses to abandon their houses and callings, and proceed to Calcutta, perhaps from the most remote parts of Hindoostan. The jurisdiction of the Country Courts over British subjects in criminal cases is now limited to cases of assault and trespass, and I do not think that it will be extended. Some new tribunal must be constituted, and none seems so consonant to English feeling, or so free from all objections, as general sessions of the peace, to be holden at the principal stations, before two or more Justices of the Peace, with an English barrister of experience and standing presiding as Chairman. It would not be necessary that the jurors should be British subjects, as formerly; and I do not think that there would be any difficulty in assembling a full jury of persons professing the Christian religion at any of the stations enumerated by Mr. Maskensie.

But these and all other matters relating to India will soon be under the consideration of Parliament; and from the increased attention of late bestowed on Indian affairs, they will, I trust, be maturely considered. I could not venture to obtrude any suggestions of my own, without giving the subject time and consideration that I have not at my disposal.

All who are acquainted with the statutes relating to India must admit, that they are framed most loosely, and evince throughout an absence of local knowledge and experience; and all who have resided long in this country must, I think, regret that a general power of legislation is not vested in some local Council, that might be constituted so as to exclude all cause for jealousy from any quarter.

17 May 1829.

(Signed) J. W. Hogg.

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No. 13.

NOTE by Mr. A. Ross.

(A.)

\* It seems to me quite clear, that a decree or order of the Supreme Court, adjudging to a party a certain share of a joint estate situated out of Calcutta, and assigning specific villages or lands as forming that share, and apportioning the public assessment on those lands, is inconsistent with our regulations, and cannot be attended to either by the Judicial or by the Revenue officers of Government.\*

In cases such as that of Woomeschunder Paul, I conceive the best course for the Supreme Court to pursue would be that which is followed by the Sudder Dewanny Adawlut, namely, to adjudge merely the share or the specific villages of the estate to which the

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\* I mean, of course, that in so far as the decree or order affects the public assessment, the local authorities cannot attend to it. In every other respect, I should think they must recognize its validity.

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the party suing may be considered entitled, and to direct the Collector, in the case of a share being adjudged, to assign the lands or villages for that share; or in the case of specific lands being awarded, to apportion the public assessment to be charged on those lands. The only valid objection to the adoption of this course appears to me to be the impracticability of giving effect to the rules prescribed for the partition of estates in a reasonable time. But those rules might be much simplified. In the permanently settled provinces, where the rental of our estates (generally speaking) much exceeds the public assessment, great nicety in making a division is not now necessary to secure the interests of Government. All that seems requisite for that purpose is, that the Collector should satisfy himself that ~~no one~~ of the shares into which the estate is divided, is charged with a larger proportion of the general jumma than the others, with reference to the rental for the time being, as exhibited in the village accounts. If a joint proprietor of an estate, desiring a separation of his share, were willing to agree to a butwarra made in this manner, I should think it ought not to be objected to by Government. I dare say the division of Woomeschunder and Premchunder Paul's estate was made in this way by the commission appointed by the Supreme Court.

(B.)

The most simple remedy for the evils mentioned, would be to make the Receiver appointed by the Supreme Court to the management of an estate, and those acting under him, amenable in all respects to the laws in force in the district in which the property might be situated, with the option of appealing from the decisions and orders of the local authorities, either to the Supreme Court or to the Sudder Adawlut. In civil suits in which an European is a party, this option of appealing to either of the tribunals mentioned is allowed by the Act 53 Geo. III., cap. 155.

(C.)

I am inclined to concur in the opinion that good would result from the Supreme Court being vested with the same controlling powers as the Nizamut Adawlut over Magistrates and other officers of Government in the provinces; and I am disposed to think, also, that advantage would be derived from giving the Supreme Court an appellate jurisdiction in all civil cases in which a party dissatisfied with the decision of a Mofussil Court might prefer appealing to it, rather than to the Sudder Dewanny Adawlut; provided in such cases the process of the Court were made as simple and as little expensive as that of the Sudder Dewanny and Nizamut Adawlut. At the same time it must be allowed, that there is reason to fear that such an extension of the jurisdiction of the Supreme Court, while its process continues to be as it now is, unintelligible to any one but a regular-bred lawyer, and available to none but persons of wealth, would be productive of injustice, by enabling a rich litigant to insure the defeat of a poor one, after the latter had obtained justice in the Mofussil.

(D.)

If section 107th of the 53 Geo. III. c. 155, does not allow one British-born subject to be impleaded by another in the Mofussil Courts, the law ought to be amended. I understand, however, that the section of the Act cited, is thought to have been erroneously construed; in which case, if there has been no decision by the Supreme Court confirmatory of the construction now acted upon, it might be advisable to take the opinion of the  
present



present Advocate General on the point, with a view to revoking the Circular Order issued to the Mofussil Courts, founded on the construction referred to.

(E.)

Nothing more would seem to be necessary to make the Supreme Court part of the general scheme for the administration of the judicial business of the country, than to give it a concurrent appellate jurisdiction, in all matters civil and criminal, with the Sudder Dewanny and Nizamut Adawlut. Its jurisdiction, however, in original civil suits, should, I conceive, be confined within the limits of the Mahratta Ditch. To empower it to try in the first instance (without the consent of the defendant) suits in which the property litigated might be situated in a distant province, would, as I have already observed, open a door to injustice and oppression. It would enable a rich man to bring an unjust suit against a poor one before a tribunal in which the latter could not defend himself.

Collision between the two Courts might, perhaps, be guarded against as much as it can be, by making it a rule, that an appeal preferred to the one should be a subsequent appeal to the other in the same case.

If it were said, that by adopting this plan of giving to the Supreme Court all the powers of the Sudder Dewanny and Nizamut, the latter Courts would be rendered unnecessary, I would reply, no; because the Supreme Court could not get through a tenth part of the business to be disposed of, and also because, although it might be desirable that all persons in the interior, natives as well as Europeans, should have the option of appealing to that tribunal, it is most probable, even were its mode of procedure simple and inexpensive, that the great majority of the people would prefer the Sudder Dewanny, on account of the greater acquaintance of its Judges with their language, manners and customs.

(H.)

Whatever alteration in the jurisdiction of the Supreme Court may be adopted, I conceive it is very desirable that its orders and processes extending to the Mofussil should be executed by the local authorities, in like manner as those of the Sudder Dewanny and Nizamut Adawlut are. They would in this manner be much more effectually executed than they now are.

(J.)

In regard to the scheme of constituting a special Court, or Chamber, to consist of one or two Judges of the Sudder Adawlut, associated with the Judges of the Supreme Court, for the decision of cases in which the two Courts have concurrent jurisdiction, I apprehend a tribunal of such composition would not work well. The local experience and knowledge of the Sudder Judges would not probably be thought by the Judges of the King's Court sufficient ground on which to form a decision, when local information, as to any particular point which it might be necessary to establish, could be obtained by the examination of the witnesses. The Judges of the Sudder, therefore, could afford but little available aid to the Judges of the Supreme Court, while the only effect of the superior legal wisdom of the latter would be to *dumbfound* the common sense of the former. I may remark also, that the wisdom which is only to be derived from the study of the laws of England, and of the rules of practice of the Courts of that country, is not necessary to enable a Judge to administer substantial justice in other countries. On the contrary, I have

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have somewhere seen it observed, that where a simple and rational code of procedure exists, a man of liberal education, having a knowledge of the science of jurisprudence, and a mind disciplined to habits of reflection and combination, would be essentially better fitted for the exercise of the judicial functions, than one burthened and trammelled with all the legal wisdom and knowledge of Lord Eldon.

I should fear, therefore, that any attempt to join together in one Court the learned wisdom of the King's Judges and the unlearned common sense of the Sudder Judges, in a way likely to be productive of advantage, would fail. It would be much better, I conceive, to let each work separately, giving appellants the option of submitting their cases to whichever of the two they might prefer.

(K.)

As a disciple of the Bentham school of jurisprudence, I cannot but object to the proposed mode of providing for the punishment of British subjects in the interior of the country. The difficulty and inconvenience which would attend the assembling of three Justices of the Peace to hold a sessions, where there are so few of those functionaries, is alone a great objection to the plan; and that objection derives tenfold force from the consideration that one Justice or Magistrate (if qualified) holding a session would get through the business to be disposed of both quicker and better than three or any greater number sitting together could do. I would prefer making British subjects choosing to reside in the interior amenable, for offences not amounting to felony, to the ordinary local criminal Courts, with the right of appealing from their sentence either to the Supreme Court or to the Nizamut Adawlut, both of these Courts being vested with power to confirm or annul convictions, and to alter sentences; and in cases in which the evidence appeared unsatisfactory, to order a new trial in the local Court *before a Jury*.

British subjects would certainly have reason to complain of being prevented settling in the interior by being made amenable to Courts not entitled to their confidence; but it would be otherwise if the local Courts afforded requisite security for justice being duly administered by them. To Courts affording that security, on whatever model they might be formed, British subjects could not more reasonably object than the natives of the country; and if any one did object, he might then be told that he was at liberty to quit their jurisdiction if he did not choose to submit to it.

(L.)

I should hope Parliament would not consent to give the Government in India a general power of legislation, without any local check being imposed upon it. A legislative council, however, formed on right principles, appears to be very desirable. One thing would be essential, I conceive, to the usefulness of such a council, namely, that the number of its members should be large; for in the making of laws, the wisdom of a multitude of counsellors cannot but be advantageous. The Chief Judge of the Supreme Court would, I should think, be a useful member of the council; and as he could *there* exercise only legislative functions, his office being a Judge could hardly be made an objection to him. It is only on the bench that a Judge *can* act judicially, and it is only there that a junction of legislative and judicial functions seems to be possible.

(Signed) A. Ross.

No. 14.

LETTER from W. H. Macnaghten, Esq., Register, Sudder Dewanny Adawlut, to Henry Shakespear, Esq., Secretary to Government in the Judicial Department.

SIR :

Fort William, 5 June 1829.

I am desired by the Court of Sudder Dewanny Adawlut\* to request that you submit for the consideration and orders of the Right Honourable the Governor-General in Council the accompanying copy of a Letter, under date the 27th of February last, written by their order to the Honourable Company's Attorney, and of that officer's Reply and its Enclosure, dated the 25th ultimo.

2. It appearing to be the opinion of the Advocate-General that this Court does not possess the power of punishing an European British subject for contempt of Court, and its being obviously essential to the maintenance of that respect which is due to judicial authority that such power shall be conferred, I am directed to solicit the attention of his Lordship in Council to the subject, and to suggest that such measures may be adopted as may seem expedient to Government for procuring the enactment of some legislative provision to render European British subjects punishable for contempts committed in the Company's Courts, in like manner with other individuals who resort to those tribunals for redress.

3. The Court desire me to add, that the mode of proceeding suggested by the Advocate-General, namely, preventing a person guilty of contempt from acting as an attorney, and removing him from the Court, would not seem to afford them sufficient protection against insult while in the discharge of their official duties.

I am, &c.

(Signed) W. H. MACNAGHTEN, Register.

(Enclosures.)

LETTER from W. H. Macnaghten, Esq., Register Sudder Dewanny Adawlut, to R. W. Poe, Esq., Attorney to the Honourable Company.

SIR :

Fort William, 27 February 1829.

1. I am desired by the Court of Sudder Dewanny Adawlut† to request that you will beg the favour of an opinion from the Advocate-General on the following question :

2. By Clause 113 of the 53d George III. c. 155, it has been declared lawful for the Court of Sudder Dewanny and Nizamut Adawlut to execute, or cause to be executed, upon all persons subject to their jurisdiction, all manner of lawful process of arrest within the limits of the town of Calcutta. By the provisions of Regulations XII., 1825, the Civil

\* Sudder Dewanny Adawlut.—Present: W. Leicester, Esq., A. Ross, Esq., C. T. Sealy, Esq., R. H. Rattray, Esq., and M. H. Turnbull, Esq., Judges.

† Sudder Dewanny Adawlut.—Present: W. Leicester, Esq., Chief Judge; A. Ross, Esq., C. T. Sealy, Esq., R. H. Rattray, Esq., M. H. Turnbull, Esq., Puisse Judges.

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&c.

Sudder Dewanny  
Adawlut  
to Judicial  
Secretary to  
Government.

Sudder Dewanny  
Adawlut  
to Company's  
Attorney.

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&c.

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Adawlut  
to Company's  
Attorney.

Civil and Criminal Courts are authorized to punish persons guilty of contempt, by adjudging a fine not exceeding two hundred rupees, commutable, if not paid, to imprisonment, not exceeding two months. The Court are desirous of being informed whether, under the above provisions, they are authorized to inflict the penalty in question on a European British subject, who, acting as attorney in a civil suit, or otherwise coming within the Court's premises, may be guilty of contempt, and if so, in the event of the non-payment of the fine, in what gaol the offender should be confined.

I am, &c.

(Signed) W. H. MACNAGHTEN, Register.

LETTER from R. Molloy, Esq., Acting Attorney to the Honourable Company, to  
W. H. Macnaghten, Esq., Register, Sudder Dewanny Adawlut.

Sir:

Fort William, 25 May 1829.

Company's Acting  
Attorney to  
Sudder Dewanny  
Adawlut.

Having laid your Letter to the address of Mr. Poe, dated 27th February, and received 11th of March last, before the Advocate-General, I now beg leave to forward a copy of his Opinion on the matter therein contained, received this day.

I have, &c.

(Signed) R. MOLLOY,  
Acting Attorney to the Hon. Company.

## OPINION.

I do not think that the Statute 53d Geo. III. applies to the present case. The only question is, whether, under the Regulation cited, the Sudder Court is authorized to inflict the penalty on an European British subject. Assuredly such person is not commonly subject to a Provincial Court, held within any of the chief towns of the three Presidencies; and, upon the whole, I am inclined to think that it does not possess the power of punishing him for contempt by fine and imprisonment. I presume, however, that the Judges may prevent his acting as an attorney in the Court, and if he causes any disorder, or interrupts the proceedings, or treats the Judges with insult while in the discharge of their duty, they may remove him from the Court.

(Signed) JOHN PEARSON.

A true Copy:

(Signed) R. MOLLOY,  
Acting Attorney to the Hon. Company.

True Copies:

(Signed) W. H. MACNAGHTEN, Registrar.

COPIES of OPINIONS as to the Powers of the Mofussil Court to take Cognizance of  
Civil Suits in which both Parties are Europeans.

Powers of  
Mofussil Court :

COPY of Mr. Minchin's Opinion on Section 107th of 53 Geo. III.

I HAVE perused the opinion of Messrs. Fergusson and Spankie, and notwithstanding the deference which I should always be inclined to pay these gentlemen, yet I cannot on the present occasion assent to the propriety of the construction which has been put by them on the 107th Section of the 53d Geo. III.

Mr. Minchin's  
Opinion.

By the preamble of the 105th Section, after reciting that British subjects resident in India without the towns of Calcutta, Madras, and Bombay, were by law exempted from the jurisdiction of the Company's Courts, to which all other persons, inhabitants of the territories, &c. were amenable, it is stated that it was expedient to provide more effectual redress for the native inhabitants, as well in the case of assault committed by British subjects at a distance from the Supreme Court, as in cases of civil controversies with such British subjects, it enacts, that in cases of assault, &c., committed by a British subject on a native, the magistrate of the zillah shall take cognizance of the charge. The enactment of this clause, as well as the next, as to debts under fifty rupees, are undoubtedly confined to claims of natives on British subjects. But the 107th section takes a much wider scope ; it is not confined to native inhabitants (as is contended by Mr. F.), or merely to the civil controversies between natives ; but it defines the jurisdiction of the Courts in the Mofussil ; for it enacts, " That all British subjects of His Majesty, as well Company's servants as others, who shall reside or carry on trade, &c., or occupy or possess immoveable property at the distance of more than ten miles from the Presidency, shall be subject to the jurisdiction of all Courts which now have, or hereafter may have, cognizance of civil suits or matters of revenue, and in all actions, &c., and in all matters of revenue, in the like manner as natives of India are now liable to the jurisdiction of such Courts," &c. These very general words, which are not confined by any preamble, place all British subjects residing, carrying on trade, or possessing immoveable property in the interior more than ten miles from Calcutta, on the same footing as natives of India, with respect to the jurisdiction of the Mofussil Courts. It is under this clause only that the Company could be enabled to sue a British subject for any matter of Revenue ; and I doubt very much whether the Company's law officers would have ventured to advise the Government that they, as Europeans, could not maintain their claims against other British subjects in the Mofussil Courts, especially when, if so, the Supreme Court being especially precluded from interfering in matters of Revenue, a British subject indebted to the Government on account of Revenue could not be impleaded at all. This, as it appears to me, is the necessary consequence of the argument used on the other side, and, in my opinion, confutes itself.

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Mofussil Court :  
Mr. Serjeant  
Bosanquet's  
Opinion.

COPY of Mr. Serjeant Bosanquet's Opinion on the same Subject.

IT appears to me, after the best consideration which I have been able to bestow upon the Statute 53d Geo. III. c. 155, and the Opinions which have been already given on the subject, that the Zillah Courts have jurisdiction in civil suits between British subjects in the cases provided for by the 107th Section of that Act.

I certainly think that the preamble, by which the 105th Section is introduced, has reference to the 107th Section, as well as to the two preceding Sections, and that the words "civil controversies" are not satisfied by the provisions of the 106th Section only.

But it frequently happens, that the enacting part of a Statute is extended beyond the scope of the preamble; and though the preamble, in a case of doubt, affords a useful guide to the intention of the Legislature, it will not be sufficient to restrain the effect of an enactment, where the words are clear, and the intention to embrace a larger field is apparent.

The 105th and 106th Sections are in terms confined to the complaints of natives; but in the 107th Section the language is changed, and a much more comprehensive form of expression adopted.

Before the passing of the 53d Geo. III. it was competent to a British subject, as plaintiff, to sue a native in the Zillah Court.

The 107th Section of the Act now provides, that all British subjects who shall reside, carry on trade, or occupy immoveable property at a distance of more than ten miles from the Presidency, shall be subject to the jurisdiction of all District Courts, having cognizance of civil suits on matters of Revenue, in all actions and proceedings of a civil nature, and in all matters of Revenue, except as therein excepted, *in the like manner as natives of India* and other persons not being British subjects are now liable to the jurisdiction of such Courts under the Government Regulation. By the express terms of the enactment, a British subject is made liable to suit in the Zillah Court in the same manner as a native; and if a British subject could sue a native before the Act, it seems to follow that he may sue a British subject now. The objection to this construction is, that the whole object of these legislative provisions was to give relief to natives only, leaving British subjects in the same situation in which they stood before the passing of the Act; but though this may be truly said respecting the matters of the 105th and 106th Sections, it is evident that the 107th Section contemplated something more than suits on the complaints of natives, since British subjects are rendered liable to suit in the Zillah Courts, not only in all actions and proceedings of a civil nature, but in all matters of Revenue, which cannot, I apprehend, relate to the demands of natives.

It has been observed, that the appeal to the King's Court of the Presidencies is only given to British subjects *against* whom suits may be brought; from which an inference is drawn, that the clause was not intended to embrace cases where British subjects were plaintiffs. But to this it may, I think, be answered, that the British subject plaintiff is left in the same situation as he was before the Act. If he sued a native, he must appeal to the Court having the regular appellate jurisdiction from the native Courts.

By the Statute a British subject is made liable to jurisdiction of the Zillah Court in the same

same manner as a native ; if, therefore, a British subject would sue a British subject in the Zillah Court, he must sue him as he would sue a native, and appeal in the same way.

I can see no reason why such a decided difference of expression should have been adopted in the 107th Section from that which had been pursued in the two preceding Sections, unless a more extensive effect was intended to be given to the 107th Section.\*

*COPY of Sir N. Tindal's Opinion on the same Subject.*

I AGREE in opinion with Mr. Serjeant Bosanquet and Mr. Minchin, that the 107th Section must be considered as applying to the case of a suit in which both plaintiff and defendant are British subjects ; first, From the generality of the words in that Section, by which British subjects are made subject to the jurisdiction of those Courts, in like manner as natives of India ; and it is well known that natives of India were subject to the suits of British subjects in those Courts ; secondly, Because they are made liable to all actions and proceedings of a civil nature, and in all matters of Revenue, and questions of Revenue can only arise between British subjects and the Government ; and thirdly, Because by the 108th Section no British subject shall be allowed to sue any civil action against any person whomsoever in these Courts until he shall file a certain certificate, which shows that British subjects might maintain the character of plaintiffs, as the former Sections have shown that they might be defendants.

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&c.

Powers of  
Mofussil Court :  
Mr. Serjeant  
Bosanquet's  
Opinion.

Sir N. Tindal's  
Opinion.

No. 16.

LETTER from the Judges of the Supreme Court at Calcutta, to the Secretary of the Board of Commissioners for the Affairs of India.

SIR :

Calcutta.

We beg that you will submit to the Right Honourable the President and Commissioners for the Affairs of India the following Statement, with the accompanying Papers.

Judges of  
Supreme Court  
to Board of  
Commissioners.

At the opening of the fourth Sessions of Oyer and Terminer and Gaol Delivery, in the last year, it appeared that four persons, either Hindoos or Mahometans, were in the gaol, under commitments by a Justice of the Peace, upon a charge, as to three of them, of being guilty of a burglary and larceny in the suburbs of Calcutta ; and as to the fourth, of having received the stolen goods after they had been carried by the others into the town. These circumstances having been brought by the Clerk of the Crown to the notice of the Chief Justice, before whom the Sessions were to be held, some further inquiry was made, and it was learnt that two of the prisoners, at least, were inhabitants of Calcutta, and that the case had been before the Provincial Court, which had disclaimed the cognizance of it, and had delivered the prisoners to the police of Calcutta.

The practice which has prevailed here has been for the magistrates to commit no persons, except such as are alleged to be " British subjects," for trial before the Supreme Court, unless the offence has taken place within the limits of Calcutta ; but the com-

mitment

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mitment in this case having been made, the Chief Justice did not see how he could discharge the prisoners without putting them upon their trial; and he directed only that the indictment of the Clerk of the Crown should state the facts in such manner that any objections which the prisoners might be entitled to take should be apparent on the record.

The prisoners were tried and convicted, and the accompanying Papers are an office-copy of the record, and a copy of the Chief Justice's notes. No doubt is entertained of the guilt of the parties; but the questions of law which are involved in the case are so important, and it has long been felt to be so desirable to have them determined, that as the prisoners had no counsel, and were not in a condition to prosecute appeal, all the Judges of the Court agreed from the first as to the propriety of submitting the case to the Board of Commissioners, in order that it might be laid before His Majesty's Most Honourable Privy Council as if it were an appeal, or that His Majesty's pardon might be at once obtained, according to the provisions of the 20th clause of the Letters Patent of 1774, if the circumstances should seem to call for it.

As the record stands, the question seems to be, 1st. Whether when the Supreme Court at Calcutta sits as a Court of Oyer and Terminer, its authority to try persons for offences committed beyond the limits of the town of Calcutta is restricted to the cases of those persons who are intended by the phrase "British subjects" (as that phrase is used in the Charter of the Court, and in the Statutes relating to India), and to persons in the service of the United Company, or of some British subject, or whether the authority extends generally to the subjects of His Majesty and to persons who are in their service. 2dly. If it extends generally to the subjects, then whether persons not of British descent, who are born under the sovereignty of the British Crown in India, are included in the term "subjects," as it is used in the 13th Geo. III. c. 63, s. 14, in the Charter of the Court, s. 19, in the 26th Geo. III. c. 57, s. 29, and in the 33d Geo. III. c. 52, s. 66. 3dly. If they are included, whether any other evidence is required to raise the presumption of a native prisoner being such subject, than that of his having been, at the time of committing the offence, an inhabitant of the British territories in India.

Upon the first point, it is perhaps unnecessary to mention that the terms "British subjects" and "subjects of Great Britain, of Us, Our heirs and successors, &c.," are supposed to have a peculiar signification in the Charters of the three Supreme Courts and in the Indian Statutes. Their import has never been precisely defined. It is universally admitted, that they include all persons born within the United Kingdom, or whose fathers or paternal grandfathers have been born there; and unless the Island of Bombay, by force of the Charter of Charles the Second, forms an exception, that they do not include the natives of India who are not of British origin. But it is not well understood whether they do or do not include the subjects of His Majesty born in the West-Indies, Canada, and other British possessions out of India, or illegitimate children born in India of British persons, many of whom are Christians, receive their education in England, and on their return to India associate with the principal classes of British society, and frequently intermarry with British persons. The prevailing opinion is, that these are not "British subjects," although an expression in the 21st Geo. III. c. 70, s. 16, seems to justify the suppo-

sition.

sition that the Legislature has contemplated both British European subjects and other British subjects not European. One of the most cogent instances of its being necessary to construe the term "British subjects" in some restricted sense, is the 98th clause of the 33d Geo. III. c. 52, inasmuch as that clause prohibits all those whom the term does include from residing at a distance of more than ten miles from the seat of Government, unless under special license. Numerous other instances of the peculiar use of the expression may be found, especially in the Letters Patent by which the Supreme Courts at Madras and Bombay have been constituted (which in many important particulars have been varied from the Charter of this Court), and in the 53d Geo. III. c. 155, s. 101, 105, 107, 108. The 13th Geo. III. c. 63, s. 34, and the Charter of the Supreme Court at Calcutta, in s. 19, manifestly employed the words in a restricted sense; and it was therein directed that Juries should be formed of *British subjects and subjects of Great Britain* "of Us, Our heirs and successors," &c.; but the 13th Geo. III. c. 63, s. 14, and the latter part of the 19th clause of the Letters Patent, dropped the qualifying term "British," and provided that "subjects" generally should be liable to be *tried* for treasons, &c. committed any where within the Bengal Provinces, &c.; and the 26th Geo. III. c. 57, s. 29, makes all "subjects" who are resident in India amenable to the Courts of Oyer and Terminer for any murder or other offence committed between the Cape of Good Hope and the Straits of Magellan; and the 33d Geo. III. c. 52, s. 67, in like manner makes the "subjects" generally amenable for offences committed in the territories of Native Princes.

If a construction were to be given to the term "subjects" in those latter instances which should confine its meaning to persons of British birth or descent, the Court of Oyer and Terminer at this place would be prevented from taking cognizance of any crimes which might be committed beyond the limits of Calcutta and the factories subordinate thereto, by His Majesty's colonial subjects, or by the half-castes and other native Christians of India, or by any persons whatsoever born out of wedlock beyond the limits of the United Kingdom; and inasmuch as we apprehend that there might even now be some objections against trying the Christian natural-born subjects of His Majesty upon capital charges, especially treason, in the Provincial Courts, where the Mahometan law is administered and its forms observed, it would follow, that a large class of persons in India might have an immunity from punishment for the highest crimes. But when it is further considered, that at the time the Letters Patent of this Court were granted in 1774, the Provincial Courts of criminal law were held under officers of the Native Princes, and in their names; and that neither those nor any other Provincial Courts of criminal jurisdiction in Bengal had been recognized by the British Legislature, but *only* the Supreme Court and the Court of Quarter Sessions at Calcutta; it seems in the highest degree improbable that the Parliament could have meant to have excepted any classes of the natural-born Christian subjects of His Majesty, who might be resident in Bengal, from a liability to be prosecuted in those two Courts for their crimes and misdemeanours. These considerations lead us to conclude, that by the term "subjects" in the 19th clause of the Letters Patent of 1774, and in other passages where it occurs without the adjunct "British," the Crown and the Parliament must have meant generally the natural-born subjects of the King.



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2. If this be so, it is next to be considered whether an exception can now be made of Mahometans and Hindoos, and other Indian natives, or any particular classes of them. We are aware of the old doctrines of the Common Law respecting infidels, but they have scarcely been acted upon since the Reformation; the Court of King's Bench would not avow them in the case of the East-India Company against Sandys in 1684; they were rejected and stigmatized by Lord Mansfield in the case of Campbell against Hall, in 1774; they were utterly irreconcilable with the British system of Government in India, and with many of the Statutes on which it is founded; and it seems to be impossible to maintain at present, that their religion makes the Hindoos or Mahometans incapable of the character and relation of subjects. A recent statute gives the right and liability to sit on juries to all those native inhabitants of Calcutta, Madras, and Bombay, who are not the subjects of any foreign state.

The proposition which seems to us to afford the strongest ground for contending that the Mahometan and Hindu and other Indian natives are not generally liable to be tried, as subjects of the King; before the Court of Oyer and Terminer, for offences committed in the Bengal Provinces, beyond the limits of Calcutta and the factories subordinate thereto, is that of their being entitled, like the inhabitants of other ceded or conquered countries, to the use and privilege of the law which prevailed in each Province at the time it came under the sovereignty of the British Crown, unless it can be shown that subsequently, by some express, positive, and pointed enactment or ordinance, the former law has been abrogated, and that, in this view of the case it is not sufficient to show, as to natives, that they, nor even that the class to which they belong, are now subject; but that it ought to be shown that they belong to a class which, in 1773-4, was intended by the term "subjects," as it was used and understood at that time by the Parliament.

Up to and at the period when the present Supreme Court was established by the Letters Patent of 1774, which were authorized by an Act of Parliament of the preceding year, the Legislature did not explicitly declare the Bengal Provinces, nor even the settlement at Fort William, and its dependencies, to be the dominions of the Crown; and although the 13th Geo. III. c. 63, is hardly intelligible, except upon the supposition of their being so in substance and reality, yet the Letters Patent of 1774 describe the settlement at Fort William as a "factory," with other factories dependent upon it; and the rights and powers of the Company and of the British Government in the interjacent provinces, are designated by the doubtful terms of territorial acquisition or possessions; which terms have continued in use even to the present time. It is, in truth, a matter of great difficulty to show with any certainty in what relation it was that the Legislature then meant it to be understood, that the Bengal Provinces and the inhabitants of them were placed; and although large powers over Hindoos and Mahometans resident within Calcutta and the factories dependent on it, and over the "subjects" of His Majesty in the territorial acquisitions, and other powers extending generally throughout every part of Bengal, Behar, and Orissa, were given by the Letters Patent, and were left untouched by the 21st Geo. III. c. 70, yet it was not made so clear as not to have been always matter of dispute whether the Crown or the Legislature then considered that any Hindoos or Mahometans, or other mere natives on this side of India, were, properly speaking,

speaking, subjects of the King; neither is it easy to determine, in any case, at what periods precisely the dominion of the Mogul and other Indian Princes entirely terminated, and that of the Crown was established; but we think a fair construction of the 13th Geo. III. c. 63, and of the 21st Geo. III. c. 70, especially the 19th clause of the latter, leads to the conclusion, that even then the Legislature considered that there were native subjects; and at last the sovereignty of the British Crown over all the territorial acquisition was unequivocally asserted in 1813, by the 53d Geo. III. c. 155. We apprehend that since that time, at least, the British territories in India have been the declared dominions of the Crown, and that all persons born therein are His Majesty's subjects.

It would seem, therefore, to be necessary to state the law by which the Mahometans and Hindoos, and other natives of India, although they may be subjects of the King, yet unless they are in the service of the Company, or of some British subject, are usually considered to be exempted from the jurisdiction of the Supreme Court for offences committed beyond the limits of Calcutta. In this way the term "subjects," as used in the Letters Patents of 1774, comprehended only those classes of persons who were plainly recognized as subjects of the Crown at that time; and it had not then been declared that the Hindoos and Mahometans and other Indian natives were subjects. The latter Statutes, which have made use of the same term, with reference to the Letters Patent, or to any matters dependent on them, have used it in the same limited sense; and even so late as in the Statute 33 Geo. III. and the others which have been before mentioned, the word "subjects" means and comprehends only such classes of persons as had been claimed or recognized for subjects in 1774.

It would not, perhaps, have occurred to the present Judges of the Supreme Court to have laid down this rule of construction, if they had been called upon to look at the statutes, without any reference to usage. But it is certain that an usage has prevailed, of proceeding as if that part of the jurisdiction of the Supreme Court which belongs to it as a Court of Oyer and Terminer, did not extend to the mass of the Indian population beyond the limits of Calcutta; and it is scarcely necessary to observe, that if it did, it could not be effectually exercised. We should be at a loss, however, to say upon what legal grounds any class of the Indian natives could be considered to be not personally liable to the Court of Oyer and Terminer for crimes committed in any part of the Bengal Presidency, if it could be shown that they were of any class which in 1774 was manifestly and unquestionably subject to the Crown; and it seems to be, at the least, very doubtful whether natives of Calcutta must not have been so.

Being, however, impressed with a sense of the obligation and importance of observing cautiously every subsisting usage (which is not illegal), where the jurisdictions of two distinct and very different systems are to be experienced within the same territories, we have anxiously sought for grounds and reasons of law on which the usage which we have stated might be supported; and having pointed out the best and plainest which we are able to find, we are willing to rest upon them, such as they are.

3. If the rule we have stated be the true one, it would seem to be necessary in all cases where a party is indicted for any offence committed beyond the limits of Calcutta, to require proof, not only of his being a subject of His Majesty, but of his being of some class or description of persons who, in 1774, had been recognized as subjects, or of his

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being in the service of the Company or of some subject; and inasmuch as in this case there was no regular and full proof of any of the prisoners being subjects, although two of them were at the time inhabitants of Calcutta, and the others resident in the suburbs, we submit to the consideration of the Right Honourable the President and Commissioners, the propriety of soliciting for the prisoners His most gracious Majesty's free pardon, according to the provisions of the twentieth section of the Letters Patent of 1774, or of laying the case, if it should be thought more advisable, before His Majesty's most honourable Privy Council.

From the manner in which the locality of the offence has been stated in the indictment, which contains no averment of the vicinity of Kidderpore to Fort William, it is not, perhaps, material to add, that the house in which the burglary was committed, though beyond the present limits of Calcutta, is immediately adjoining to them, and was proved at the trial to be so, and consequently is within that district of ten miles round Fort William, throughout which the jurisdiction of a Court of Oyer and Terminer was established by the Letters Patent of 1726 (the 12 Geo. I.) and within which British persons have unrestricted permission to reside. The expression used in the Letters Patent of 1774, of factories subordinate to Fort William, has now no application, for all the factories are merged in dominion.

It is, no doubt, needless for us to crave the attention of the Right Honourable the President and Commissioners to the painful difficulties which are connected with the unsettled and vague state of the laws under which the Court has to exercise, in the provinces, a jurisdiction in some cases concurrent, and in others conflicting, with that of the Provincial Courts; so that, in instances of the highest degree of criminality known to the law, it may chance to be the intricate question, whether a culprit is amenable to this Court or to others; and with respect to those Christian persons, born or residing in the provinces, who are not British, according to the interpretation put on that term, there are some who maintain the opinion, that for any offences above the degree of a misdemeanour, they are not amenable to either jurisdiction; and there are others who hold that a man may be amenable only to our Court as a British, whilst his wife, as a half-caste Christian, may be amenable only to the Provincial Courts, or *vice versa*.

We are sensible that it is no right of ours to make or even to suggest alterations of the laws, but to administer them as they are. We hope, however, that we have not done more than was called for on this occasion, by adverting to the perplexities which in some instances have arisen out of the present imperfect provisions, and of which the progress of time, the general understanding of the sovereignty of the Crown, the increase of the European and native Christian population, and their dispersion through the provinces, have a tendency to make a recurrence more frequent. We shall be at all times ready to suggest the best remedies that we can think of, if it is desired that we should do so; or in any other way in which it is possible for us to render assistance in correcting what is defective, our utmost endeavours may be commanded. In the mean time we shall continue to do the best we can with the law as it is.

We would gladly have spared the Right Honourable the President and the Commissioners the trouble of taking this case into their consideration, but many circumstances, and some of recent occurrence, appear to us to make it necessary for the due administration

administration of justice, that the relations in which the native subjects stand should be rendered as free from doubt as possible; and many reasons have satisfied us that this cannot be effected to any good purpose, except by a reference of the matter home. If more delay has taken place in the present case than was to be desired, we hope it will be attributable to its true cause, the anxiety which we have felt to state with caution the conditions of the important question of which we seek a resolution.

The occurrences which have taken place at Bombay, though they have increased our anxiety in preparing this statement, are not so connected with the case as to depend on the decision of it; the present question being confined to the jurisdiction of the Court of Oyer and Terminer, and that which has arisen at Bombay, relating, as we apprehend, to the powers of the Court there as a Court of King's Bench.

We are, &c.

No. 17.

CORRESPONDENCE with the Nizamut Adawlut and the Magistrates of the Suburbs of Calcutta, respecting Khodabux, Saduttoolah and Challaroo; marked (A. B. C. D.) (Judicial Department.)

(A.)—LETTER from H. Shakespear, Esq., Secretary to Government, to W. H. Macnaghten, Esq., Register of the Nizamut Adawlut.

SIR:

Council Chamber, 16 June 1829.

I am directed by the Right Honourable the Governor-General in Council to request that the Court of Nizamut Adawlut will report the particulars of the case noted in the margin,\* in which the prisoners were acquitted by the Judge of Circuit for the division of Calcutta at the gaol delivery of the suburbs of Calcutta for the monthly sessions of June 1828.

Correspondence  
with  
Nizamut Adawlut  
and Magistrates  
of Suburbs.

2. It appears from the Form, No. 5,† which accompanied your Letter, dated the 15th of

\* Khodabuksh, Saduttoolah, Challaroo, prisoners: charged with burglary and theft, and participating in the division of the plundered property.

† (Form No. 5.)—ABSTRACT STATEMENT of Prisoners Acquitted by the Judge of the Court of Circuit for the Division of Calcutta at the Gaol Delivery of the Suburbs of Calcutta for the Monthly Sessions of June 1828.

No. of Calendar.	No. of Prisoner.	Names.	Sex.	Age.	Religion or Caste.	Profession.	Crime charged, and when alleged to have been committed.	Acquitted for want of Proof of Guilt, or on clear Proof of Innocence.	Sentence of the Court of Circuit, when passed.	EXPLANATION and REMARKS.
1	1	Khodabuksh. Male.	55.	Mossumman.	Mossumman.	Burglary and theft, and participating in the division of the plundered property.	For want of Proof of Guilt.	20th July 1828.	There was no proof against the Prisoner, as appears by the Proved facts, which have been submitted to the Superior Court for their final sentence on the Prisoner, Ashiqur Khatunmah. Vide Letter, dated 2d July 1828.	
	2	Saduttoolah. ditto.	27.	ditto	ditto	ditto	ditto	ditto	ditto.	
	3	Shallaroo. ditto.	28.	ditto	ditto	ditto	ditto	ditto	ditto.	

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&c.

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of August 1828, that there was no proof against the prisoners, and that the proceedings were submitted to the Nizamut Adawlut for their final sentence on another prisoner named Ashghur Khansamah.

The Governor-General in Council desires to know whether any, and what, orders were given for transferring the above-mentioned prisoners to the custody of the Magistrates of the town of Calcutta, as he understands they were afterwards committed to take their trial before the Supreme Court, and were convicted of the burglary charged against them.

I am, &c.

(A true Copy:)

(Signed) H. SHAKESPEAR,  
Secretary to Government.

(B.)—LETTER from W. H. Macnaghten, Esq., Register of the Nizamut Adawlut, to Henry Shakespear, Esq., Secretary to Government in the Judicial Department.

SIR:

Fort William, 26 June 1829.

I am directed by the Court of Nizamut Adawlut\* to acknowledge the receipt of your Letter, dated the 16th instant, requesting to be made acquainted with the particulars of the case of Khoda Buksh and three others, who were charged with burglary and theft, and receiving plundered property; three of whom were acquitted at the gaol delivery of the suburbs of Calcutta for June 1828, and the fourth of whom, namely, Ashghur Khansamah, was released by the order of the Nizamut Adawlut, under date the 16th of July last.

2. In reply, I am directed to submit the accompanying Copy of a Letter of reference which accompanied the proceedings sent by the late Third Judge of the Calcutta Court of Circuit for the final order of this Court, from which his Lordship in Council will perceive that the prisoner Ashghur was acquitted of the burglary by the Court below; and with respect to the receipt of plundered property, of which offence the law-officer of the Court of Circuit declared him convicted, a reference was made to this Court on a doubt as to the jurisdiction.

3. On reference to the Persian proceedings, it appears that there was no evidence to the actual commission of the burglary against any of the prisoners forthcoming before the Court of Circuit; that suspicious property was found in the house of Khoda Buksh, though it turned out to be his own, from the evidence of the witnesses examined. It appeared also, from the deposition of one Ahnud Khan, that the prisoners, Ashghur and the rest, were seen in the house of Buksh Khoda, in Colingah, selling the plundered property to Mooteram, who borrowed from one Jughohun the money to pay for it. This Jugmohun deposed to having sent to Moteeram a 100 rupee bank note (No. 2,916); and a note of the same number was deposited by Ashghur with one Chedam Dutt, as appeared from the evidence of the said Chedam. This circumstance, together with the fact

\* Nizamut Adawlut.—Present: W. Leicester, Esq., A. Ross, Esq., C. T. Sully, Esq., R. H. Ratway, Esq., and M. H. Turnbull, Esq., Judges.

# SELECT COMMITTEE OF THE HOUSE OF COMMONS. 1121

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fact of the plundered property being found in the house of Moteeram, was held sufficient to bring home the criminal receipt and disposal of the property to Asghur.

4. I am directed to add, with reference to the last paragraph of your Letter, that the Court did not issue any orders for transferring the prisoners to the custody of the Magistrates of the town of Calcutta, the whole of them having been acquitted of the burglary by a competent authority; and the case of Asghur, as involving the charge of participating in plundered property, having been referred solely on the question of jurisdiction. This point having been determined in favour of the prisoner, and the Judges by whom the case was revised considering that all the proceedings held in regard to Asghur were null and void, they were of opinion that he was entitled to his release, which was ordered accordingly, without reference to the guilt or innocence of the prisoner; which question was not entered into by the Nizamut Adawlut.

I am, &c.

(Signed) W. H. MACNAGHTEN, Register.

LETTER from R. Brown, Esq., Third Judge of the Calcutta Court of Circuit, to W. H. Macnaghten, Esq., Register of the Nizamut Adawlut, Fort William.

SIR:

Belvidere, 2d July 1820.

I have the honour to transmit, for the consideration of the Nizamut Adawlut, the trial noted in the margin.\*

2. The prisoner Asghur was committed for trial, along with three others, who had been released, as an accomplice in a burglary committed within the suburbs of Calcutta, and for participating in the division of the plundered property.

3. I concur in the futwa of the Kasee of this Court, which acquits him of the burglary, and convicts him of having had stolen property in his possession, knowing it to be stolen; but as the evidence proved his possession of the property at Colinga, within the limits of the town of Calcutta only, and not at any place within the jurisdiction of this Court; I do not think myself competent to pass sentence, and therefore transmit the proceedings for the orders of the Nizamut Adawlut.

4. I beg to remark, that Moteeram Zurgur, to whom the property was sold, and in whose house at Colinga it was found, was not committed, on the ground of his not being liable to be tried out of Calcutta. He asserted before the Magistrate, that the property was his own, and named witnesses to prove that assertion, whose examination would have rendered the evidence respecting Asghur more complete; but I did not think it necessary to postpone the trial for their attendance, being perfectly satisfied that this Court had no jurisdiction in the case.

I am, &c.

(Signed) R. BROWN, Third Judge.

A true Copy:

(Signed) W. H. MACNAGHTEN, Register.

\* Calcutta Court of Circuit.—Suburbs of Calcutta, Trial, No. 1, of the Calendar of the Monthly Sessions of June 1820. Bebee Het, alias Musa, Begum, versus Asghur Khanesamah.—Charge: Burglary and Theft, and participating in the division of the plundered property.

# 1122 FIFTH APPENDIX TO THE THIRD REPORT OF THE

LEGISLATIVE  
COUNCILS,  
&c.

Correspondence  
with  
Nizamut Adawlut  
and Magistrates  
of Suburbs.

(C.)—LETTER from H. Shakespear, Esq., Secretary to Government, to the Acting Magistrate of the Suburbs of Calcutta.

SIR:

Council Chamber, 7th July 1829.

At the June Sessions of 1828, three prisoners, noted in the margin,\* were tried and acquitted by the Third Judge of the Calcutta Provincial Court; and the proceedings in regard to a fourth prisoner, named Ashgur Khansamah, were referred for the final sentence of the Nizamut Adawlut, by which Court he was released on the 16th of July last.

2. As it appears that the prisoners were afterwards tried before the Supreme Court, I am directed by the Right Honourable the Governor-General in Council to desire you will report whether the prisoners were transferred to the custody of the Magistrates of Calcutta, and if so, by what authority and upon what grounds.

I am, &c.

(Signed) H. SHAKESPEAR,  
Secretary to Government.

(D.)—LETTER from J. Thomason, Esq., to Henry Shakespear, Esq., Secretary to Government, Judicial Department, Fort William.

Fouz' Adawlut, Suburbs of Calcutta,  
13 July 1829.

SIR:

In reply to your Letter to my address, dated the 7th instant, I have the honour to report the following particulars:—The three prisoners, Khudabuksh, Sadutoollah, and Challaroo, were released, agreeably to the Circuit Judge's orders, on July 5th, and Ashgur Khansamah on July 31st, in compliance with the orders of the Nizamut Adawlut. On their release they were sent by the Magistrate to the Calcutta police, that investigation might be made into their character, as they were inhabitants of the town. The Magistrate also conceived that their presence would be necessary in the trial of Mootee Ram, who had previously been sent to the police for the investigation of a crime which he was accused of having committed within the precincts of the town.

I have, &c.

(Signed) J. THOMASON,  
Officiating Magistrate.

No. 18.

MEMORANDUM on the Recorder's Court at Singapore, Malacca, and Prince of Wales' Island, by Mr. R. Fullerton.

Mr. Fullerton's  
Memorandum on  
Recorder's Court  
at Singapore.

THE revenues of these Settlements generally will be found much reduced this year, the causes of which are as follows: The Grand Jury at Singapore having made a presentment against the Gambling Farm, that item ceases of course, and reduces the revenue

\* Khudabuksh, Sadutoollah, Challaroo, charged with burglary and theft, and participating in the division of the plundered property.



revenue by 71,200 rupees. The same cause reduces the same item at Malacca 9,598; for though the Jury did not present, the Judge in his speech declared it illegal. The other farms at Singapore were sold for the year; but for the principal one, the Opium Farm, the biddings have fallen considerably, under the idea entertained by the people, that gaming is not worse than smoking opium, and that the farm will be, like the other, presented by the Jury in the course of the year. Another inducing cause of reduction is the difficulty of punishing breaches of the Farm License. It has hitherto been and is done now by the Magistrates, *who are civil servants*; but such is understood not to be strictly legal, and fears are entertained that that mode of proceeding will be discontinued. The principal farms at Prince of Wales' Island have also been sold far under their usual amount. The causes are very clear. The punishment for breaches of the Farm Regulations used to be enforced by simple application and proof before the Magistrates. This has, at Penang, been declared illegal by the present Recorder. A suit in Court is necessary in every case, and such is the difficulty, delay and expense of such a process, that the renter can hardly resort to it. Several suits were brought on last year, under the assistance of the Government Law Agent, in order to establish by a decision the legality of the tax, under Act 54 Geo. III. cap. 105, as being a tax existing and in operation at the date of the Act; but they all went off before coming to the merits, on some technical informality in the process. I always anticipated a great loss and difficulty in collecting the revenue, as the result of the first holding of the Court at Singapore before the professional Judge, because the people were for the first time to see a separate and distinct authority from the Government set up, through whom alone revenue demands can be enforced. In the case of the lands and grounds, for example, they were all made over to the present occupants, on documents called "Location Tickets," which declared the land *subject to such terms and conditions as might hereafter be imposed*. The process going on has therefore been to call on the Location Tickets, measure the ground regularly, and then give the permanent lease, subject to a quit-rent settled with reference to situation. Until this process has been gone through, it was not usual for the occupier to pay rent. The substitution, however, of the permanent lease for the Location Tickets has been going on under the authority of the Executive Government, and of course the revenue from the quit-rents has been gradually increasing. The case is now changed; the holders of the Location Tickets and of the lands finding the legal process under the intervention of the Court a previous measure, decline receiving the leases and paying rent, and hold on free until compelled by law; and we shall probably have to file many thousand writs of ejectment, when there would not have otherwise arisen a question of doubt. Here again we are to inquire, under what rule or law are such questions to be tried? And this brings me to the explanation of the radical cause why revenue cannot be raised in these eastern countries. On the continent of India, the Governments are invested with legislative power, and that power is exercised in prescribed form, by the enactment and promulgation of laws registered in the Judicial Department, under the term of Regulations. Those Regulations, besides providing for the forms of administering justice, define the relative rights of the Government and the subject, and prescribe the mode under which those rights are to be inferred on the one part, maintained on the other, by application to local Provincial Courts,

bound

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at Singapore.

bound to act according to those Regulations. The Supreme Courts have no jurisdiction in any matters of revenue, or the collection thereof. In the Revenue Department, public officers hold summary powers of enforcing, in the first instance, all demands, whether for payment of arrears, ejecting from lands unduly held, leaving the *onus prosequendi* on the party supposing himself aggrieved, distraint when no arrear is due, or ejectment from lands properly belonging to him. It is only under the exercise of the summary process that the collection of the Government revenue in India is insured. In these eastern settlements the Government has no power of framing those legislative provisions. There does not, therefore, exist any distinct and clear definition of relative rights, or prescribed mode of enforcing and preserving them. There are no Provincial Courts acting under local law. Government possesses no power of enforcing its demands. The Court administering justice as a Revenue Court is a King's Court, framed on the English model, and taking the common law of England as its guide. Questions of revenue, therefore, whether arising from land or excise, fall to be tried under principles that have no relation or resemblance to the local situation of the country and its inhabitants. Before demands can be enforced, legal process in all the English forms must be resorted to; writs of ejectment must be sued for; suits entered for arrears; delays, expenses, doubts and difficulties arise, that render it easy for the people to evade the payment of all demands, and induce the officers of Government rather to abandon the demand, small in individual cases, though considerable in the aggregate, rather than encounter all the difficulties and go through forms which they cannot understand. Let us suppose, for example's sake, that the Supreme Court at Calcutta were at once declared the only Revenue Court; that every arrear of revenue, every question resulting from its collections or the occupation of land, were to be tried there in the first instance, under all its forms; would it be possible to realize the land revenue? Yet this in a small way is exactly our case. Singapore, indeed, is of recent acquisition, and the titles hitherto given have been in English form; but even at Singapore there is much land occupied without any title whatever; and unless something is done by regular enactment, possession will make a title, as it has done in this island, from the neglect of the local authorities. But how are we to regulate decisions at Malacca? There the sovereign right is one-tenth of the produce; the Dutch made over the right to certain of the inhabitants more than 100 years ago. This Government, by way of insuring increase of cultivation and introduction of population, redeemed the right. How are we to levy the tenth, if refused? The land tenures at Malacca bear no analogy or resemblance to any English tenure; yet by such they must, in case of doubt, be tried. Regulations adapted to the case have indeed been sent to England, but until local legislation is applied, and the mode of administering justice better adapted to the circumstances of the place, it seems to me quite useless to attempt the realization of any revenue whatever.

(Signed) R. FULLERTON.

Prince of Wales' Island,  
18 May 1829.

# SELECT COMMITTEE OF THE HOUSE OF COMMONS. 1125

No. 19.

**LETTER** from the Judges of the Supreme Court at Calcutta to the Governor-General in Council, &c. &c. &c.

Garden Reach, Calcutta, 2 October 1829.

**RIGHT HONOURABLE LORD, AND HONOURABLE SIR:**

The important communication which was made to us by your Letter of the 14th of July, and by the numerous papers which accompanied it, has required, up to this time, all the attention which, consistently with our duties in the Supreme Court, we have had it in our power to give; and in order that our views might be more fully and freely stated, we have thought it best that each of us should state his own separately. If any part of them should require further explanation or development, we shall be happy to receive any additional communications which it may be your pleasure to make; or, if the expression of our concurrence in measures of the Government be desired, we shall be at all times willing to submit any representations to the authorities at home which may be in accordance with our opinions, as they are expressed in the documents which accompany this Letter.

We are, &c.

**CHARLES EDWARD GREY,  
JOHN FRANKS,  
EDWARD RYAN.**

**LEGISLATIVE  
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&c.**

**Judges of  
Supreme Court  
to Governor-Gen.  
in Council.**

No. 20.

**MINUTE** by Hon. Sir Charles E. Grey; dated 2 October 1829.

1. THE propriety of submitting to the authorities at home the formation of a Legislative Council in India, is the main subject on which the Judges are invited to give their opinions by Letter from the Governor-General in Council of the 14th July 1829. At present, three distinct powers of legislation are vested by express enactment in the Governor-General in Council, and the Governors in Council of the other Presidencies. The 13 Geo. III. c. 63, ss. 36, 37; the 39 and 40 Geo. III. c. 79, ss. 18, 19; and 47 Geo. III. sess. 2, c. 68, ss. 1, 2, purport to empower the Governor-General and Governors in Council, for the good order and civil government of the settlement at Fort William, Madras, and Bombay respectively, and all places subordinate thereto; to make any regulations not repugnant to the laws of the realm, and to enforce them by reasonable fines, forfeitures, and corporal punishments: but such regulations are not valid, unless the Supreme Court of the Presidency will register them. An appeal lies against them to the King in Council; and even without appeal, they may be set aside by His Majesty, under his sign manual. The 21 Geo. III. c. 70, s. 23, and the 37 Geo. III. c. 142, s. 8, the 39 and 40 Geo. III. c. 79, s. 11, and the 47 Geo. III. sess. 2, c. 68, s. 3, give a power to the Governor-General in Council, and Governors in Council, which in the first statute is limited to the regulation of Provincial Courts, with a proviso that

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the expenses of the suitors shall not be increased. But in the 37 Geo. III. c. 142. s. 8, the same power is mentioned as a power of making "a regular code," affecting the rights, persons and property of the natives and others amenable to the Provincial Courts.\* These laws also, I suppose, may be disallowed by his Majesty in Council;† but they are not directed to be registered in the Supreme Court, and in practice, I apprehend, are from time to time altered, according to orders from the Court of Directors and the Board of Commissioners for the Affairs of India. Lastly, by the 53 Geo. III. c. 155. ss. 98, 99, 100, the Governor-General and Governors in Council in their respective Presidencies, with the sanction of the Court of Directors and of the Board of Commissioners, may impose duties and taxes within the towns of Calcutta, Madras, and Bombay; for the enforcing of which taxes, regulations are to be made by the Governor-General and Governors in Council, in the same manner as other regulations are made; which manner, as I have shown above, is twofold; and the statute supplies no further directions to the Governor-General and Governors in Council to guide them in their choice between the two courses. For the levying of fines and forfeitures for breaches of these regulations, the Advocates General of the Company are directed to file informations in the Supreme Courts and the Recorder's Court at Bombay; but the Recorder's Court has since been abolished; and in the Letters Patent by which the Supreme Court has been substituted in its room, it is declared that the Court has no jurisdiction in any matters of revenue either within or beyond the limits of the town of Bombay. Besides these three powers of legislation, a general power of altering the revenue and of imposing new taxes has been exercised within the provinces, and is alluded to more than once in acts of Parliament; but as there is no act which expressly confers it, I suppose it rests on the grant of the Dewanny, and on those statutes by which general powers of Government and of ordering the revenues have been given or continued to the Company for limited periods.

2. These powers cannot be said to be remarkably well defined. The exercise of one of them has been extensive, beyond what seems to have been at first foreseen by the Legislature; and it is not that which in 1773 was designed to be the only one, which has in fact been the most considerable. That which was established by the 13th Geo. III. c. 63, has been almost a barren branch; and that which was given in 1781 expressly for the purpose of making limited rules of practice for Provincial Courts, has produced a new and extensive system of laws for a large portion of the human race. I do not mention this with any purpose of blame. I do not doubt that in most respects the results have been beneficial, and perhaps the course which has been pursued could not have been avoided; but it may be doubted whether the Parliament would approve of its being infinitely extended exactly in its present direction. That large powers of legislation must continue to be exercised in India, will scarcely be questioned by any one who will look into the many volumes of regulations which have been made by the Governor-General in Council in the last five-and-thirty years. What a variety of subjects

\* See also 39 and 40 Geo. III., 79, 80.

† If the 21 Geo. III., 70, s. 23, applies to them generally, they may not only be disallowed by His Majesty in Council, but amended.

(Signed) C. E. G.

(Signed) C. E. G.

jects are comprised in them to which it would have been a hopeless task to have solicited the attention of the British Parliament! But the question is, to what extent and in what manner may a subordinate power of legislation be best established? The most limited form in which this question presents itself, is, whether it would not be better that those regulations, which not only the law, but usage, now requires to be registered by the Judges of the Supreme Court, should be passed in a Council at which they or some other persons appointed by the Crown or Parliament should assist; and I have not much hesitation in saying that it would be better. It is desirable to keep the judicial branch of Government in a great degree distinct from the legislative; but the separation of these two is not of so much importance as that of the judicial from the executive; and a complete insulation of any one of the three persons is a refinement of government which has never yet been attained, probably never will be, and if it were possible, would not, perhaps, be beneficial. The King, who is an integral part of the British Legislature, can, of himself, in almost any case, take away the effect of a sentence of any Court of criminal jurisdiction in England. The House of Lords, which is another integral part of the Legislature, is also the highest Court of appellate jurisdiction, and has a capacity of original jurisdiction in some criminal cases. By bills of attainder and pains and penalties, the whole Legislature at times has acted with all the powers of a Court of penal Justice, and with some more. The Welsh Judges, the Master of the Rolls, the Masters in Chancery, and the Judges of the Ecclesiastical and Admiralty Courts may sit in the House of Commons; the Lord Keeper and all Judges who are Peers sit in the House of Lords. The Twelve Judges are called upon to declare the law in that House, as well as in the three Courts at Westminster; and they can scarcely so restrict their opinions as not to influence in some degree questions of expediency as well as law. The King in Council is, for many purposes, both the Legislature and the Appellate Court of Judicature for several of the Colonies: and in Canada and Ceylon and New South Wales, and at the Cape of Good Hope, I believe that Judges are members of Legislative Councils constituted under recent acts of Parliament. It seems to me, therefore, that there is nothing to prevent the Parliament, if it should think fit, from imposing upon the Judges of the Supreme Courts in India the duty of assisting to form the regulations, on the legality of which they are even now required to decide before they have any force. For the expectation that some inconveniences might be prevented, and that advantages might be obtained by the Judges assisting in this way, many reasons are to be found in the lame results of the existing arrangement; in the questionable legality of some of the regulations, and especially in the history of the Stamp Regulation, which must be fresh in the recollection of the Government: but I am aware also of certain inconveniences which would be peculiarly connected with the introduction of the Judges of the only Court in which British law is administered into a Legislative Council, which must of necessity be subordinate not only to British legislation, but in many respects to British law. Incongruities of relation between the ordinances of any subordinate Legislature and the primary laws of the United Kingdom might be overlooked or misapprehended in a Council, even though Judges might belong to it; and these being afterwards ascertained by the keenness and vehemence of public censure, the Legislative Judges might have as Judges to condemn what as legislators they had sanctioned or recommended. In

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other instances, where the legality of a regulation might be merely doubtful, they would be suspected of an inclination to support the work of their own hands. To avoid, at all events, the possibility of the Judges being compelled against their will, by a majority in the Council, to pass any regulation which might be justly liable to such objections, it would seem to be almost necessary that they should retain amongst them that power of prevention which they now possess by means of their right to refuse registration. If the Supreme Court, however, were to become a Court of only appellate jurisdiction, there would be less objection than at present against any legislative functions of the Judges. Upon the whole, I express my opinion, that it would be better that the Judges should assist in Council in passing regulations, than that they should have only, as at present, the right of directing or forbidding the registration of them; but that in some way or other they ought, in that case, to retain the power of preventing the Council from passing regulations incompatible with the basis of any laws which, as Judges, they might afterwards have to administer.

3. This opinion, inasmuch as it applies only to those regulations which in usage have been confined to the town of Calcutta, covers but a small portion of the subject offered for our consideration. Ought there to be in India one or more legislative bodies for all India? What limits ought to be put to the power? Should it deal with every thing which is the subject of law? Should it legislate for all classes of persons? To what review should its ordinances be subjected? Of what persons should it consist? By whom should they be appointed? For what periods of time? What rights and powers should each of them possess?

4. That there must be a power in British India of passing some sort of regulations for every part of it, seems to be indisputable. The first and most obvious limit of such a power is, that it should not make any ordinance inconsistent with any Act of the Imperial Parliament applying to India. Another is, that the power must not extend to the alteration of any part of the unwritten law of the British constitution, on which depend the relations of British India or its people with the United Kingdom. It must not in any way vary the law of treason, or affect any rights of the Crown or of Parliament, or those which may be derived by any foreign state from treaties entered into by them with the British Crown. Some other specific limitations would probably occur upon further consideration of the subject; but I have no reluctance to declare my opinion, that by a general and vague prohibition against enacting any thing "repugnant to the laws of the realm," an Indian Legislature must be so embarrassed as to be incapable of acting with any good effect. Those words, which are employed in the 13 Geo. III. c. 63, s. 36, had long before been used as limitations of legislative powers granted to Governments in the American and West-Indian Colonies; but in some instances they have been afterwards abandoned; in others they have been disregarded; and in others they have been productive of embarrassment and confusion.\* They are so loose that no two lawyers construe them

\* See Black. Comm. 108. Rymer's Fœdera, xvii. xix. Edward's Hist. of the West-Indies, vol. ii. p. 331; vol. iii. p. 248. Stoke's Colonial Law, 14, 21, 22, 23, 27, 155. Campbell v. Hall, 20. St. Tr. 248. In the American Colonies, the words "as near as conveniently may be agreeable to the laws and statutes of the Kingdom," were in some instances substituted. Edward's Hist. of W. I., vol. iii. 364. Stoke's Colonial Law, 251.

them in the same sense. Some will affirm that any wide difference is a repugnancy ; others, that no two laws which can exist are repugnant to each other ; some, that we may not make regulations *præter legem* ; others, that they may be made *præter*, but not *contra, legem*. These points were contested before the Privy Council upon Mr. Buckingham's appeal against the Press Regulations ; and after the Supreme Court at Calcutta and the Privy Council had decided that the regulation at Calcutta was not repugnant to the laws of the realm, it was decided that it would be repugnant at Bombay by Sir Edward West ; than whom there never was a Judge of purer integrity, nor usually of a more accurate perception in matters of law. If we construe these words as meaning only an incompatibility with some primary law or some statute of the United Kingdom, applying to the place in which any new regulation may be proposed, it is not easy to bring within the limitation which they would impose, the laws passed in the American Plantations and in the West-Indies, by which the slavery of negroes was constituted, and Christian men and women, down to a very recent period, were bought and sold in markets, and were either inherited as real estate, or were bequeathed by will as part of the live stock of the testator. Yet those laws were not only permitted to stand, but on several occasions, in the course of the eighteenth century, were taken by the British Parliament as the basis of additional laws ; and all persons are bound to consider that they were not incompatible with the laws of the realm. It has for some time been known to the Parliament that in this country the Government have felt themselves obliged to permit women to burn themselves to death, and others to assist them. It is clear also that no legislation for India could at present be applied to the Mussulman or Hindoo population without acknowledging the usage of polygamy amongst them, and the rights of inheritance resulting from it. Other instances might be adduced, but these, perhaps, will be sufficient to show, that the due consistency of Indian law with the law of the United Kingdom cannot be provided for by loose and general prohibitions of repugnancy between the two ; but that it ought to be secured by specific limitations of the subordinate legislative power.

5. It seems to me desirable, that within this Presidency, at least, there should be but one Legislative Council, and that its power of legislation should extend to all persons as well as places. I do not mean that it would be possible at once, or within a given time, to subject all persons or places to the same law : but approaches might be made towards that distant end : and in the meantime the troubles produced by different streams of law running in adverse directions within the same channels, might be more easily managed than at present. The maintaining of British law, and the rights of the British Crown, and of British persons, by one sort of legislation, whether it be in or out of India, and of Hindu and Mahomedan institutions and the supposed interests of the Company, and of the Hindu and Mahomedan inhabitants of the province by another, only perpetuates the confusion and disorder of the system which comprehends these unreconciled elements. Rather than that so many sorts of law should continue to work together in the same places, I would prefer to see each Presidency divided into two or more districts, in each of which there should be a different but a single and uniform system of Regulations. A district extending fifty or sixty miles round Calcutta in every direction might be a country large enough at present for the permanent residence of any British capitalists or adventurers who might be permitted to establish manufactories, or to superintend any other speculation

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speculation or establishment; yet not so large but that a journey of less than four-and-twenty hours would bring a person from its extreme limit to the capital. Within this circuit might be established for all persons the law which is now administered by the Supreme Court. It is far from being merely English law, and is the only law in Calcutta whether for British persons, Hindus, Mahomedans, or any others. In the bulk of the provinces, the Regulations of Government, and that system of law which is administered by the Sudder Dewanny and Nizamut Adawluts, might be the sole law of all persons who might choose to be the inhabitants thereof; and in other provinces, if it were necessary, some modification of this latter system, or martial law, if severe necessity should require it, might be established or discontinued by proclamation. I am aware that the first thought which will strike many persons upon this suggestion will be that of "the Irish pale;" but from the difference of the time, place and circumstances, and improved principles of Government, I should expect the immediate consequences to be very different. I offer the suggestion only as something less inconvenient than the present state of the laws in India, and as a temporary expedient; and if it were to be adopted, it would be necessary to provide, by specific Regulations, for the execution within each district of the process of the Courts of the other. An active and efficient Legislature, with powers extending over all persons and places, would make it unnecessary to resort to any such measure; but on the other hand, it may be doubted whether the present state of things, which I believe to be unexampled in the history of the world, can last much longer. Throughout the greater part of India there are to be found some individuals at least of four distinct classes, each of which is supposed to live under a distinct system of law, and to have different rights and different duties, but none of them accurately defined. There are persons born in the British Islands, Hindus, Mahomedans, Asiatic Christians, and besides all these, there are in many parts, foreigners and subjects of Great Britain, who have been born neither in the British Islands nor in India, as to whom, I believe, there is no one who, consistently with usage, can say, with any just confidence, what law it is which applies to them. Hitherto it has been possible to make a shift; but as the native Christians, British and Colonial persons, and foreigners shall increase in numbers and pervade India, a result which must gradually take place, matters may be brought to such a pass as would scarcely be tolerable.

6. By every one who is at all acquainted with India, it will be felt at once, that in forming a legislative body, all notions for a time, beyond the foresight of man, must be excluded of any election by any class of the people, and for the present, of the admission of any Indian persons. The utmost which can be expected now is, that a legislative council should include persons of the British class, who would feel it to be their duty and inclination to look to the preservation, in their due proportions, of the rights of the several bodies politic in whom the sovereignty and powers of Government are vested, and to the promotion of the common interest of all classes of the people, and of the several interests of each, and who might be expected to be able to supply the various information which would be required in legislating for such a subject matter, and such complicated relations as India and its people present. There might be first the Governor-General and his Council. Secondly, either the existing or some former Judges of the Supreme Courts, or some other English lawyers; and these ought, not in name only, but in reality, to be selected by the Crown. Thirdly, the Bishop of Calcutta, or in his absence,



absence, the Archdeacon, unless some of the considerations, which I have before suggested, should be thought to be inconsistent with the Bishop's taking a part in the general proceedings of the Council. Fourthly, one or more of the civil servants, learned in Mahomedan and Hindu Law, and familiarly acquainted with the Government's Regulations, the habits of the Natives, and the institutions through which the provinces are governed; these might be nominated from time to time by the Governor-General. Lastly, it seems to me desirable that the Governor-General should have a power and option of appointing annually one merchant or planter, being a natural-born subject of the King, of substance and respectability, and who should have resided at least five years in India. Under these arrangements there would probably be found in every member of the body respectable talents and acquirements; in all (unless it might be some one newly arrived in the country) a considerable knowledge of Indian affairs; but especially in two out of the four Members of Council and in the other civil servants, by whom also, and by the Judges or English lawyers, sufficient legal information ought to be supplied; each of the others would bring his peculiar store of experience and knowledge. In all there might be a tolerably impartial regard to the interests of all classes of persons; but as the Government of India is at present constituted, it might be expected, perhaps, that it would be the inclination, and peculiarly in the power of two of the Members of Council and of the other civil servants, to watch over the rights and interests of the Hindu and Mahomedan population and the East-India Company; of the Judges or English lawyers to guard those of the Crown and of the British population, of which the trading interests might be further attended to by a member appointed annually from that class. In addition to a general charge of Ecclesiastical affairs, and of Christian institutions for the promotion of knowledge and religion, the Bishop might be expected to extend his especial care to the class of native Christians. The Governor-General would regulate the whole; and he alone ought to have the power of appointing the meetings of the Council for legislative purposes, and certainly ought to have a "*veto*;" but for the reasons stated in paragraph 2, it seems to me that the Judges, or other English lawyers appointed by the Crown, ought amongst them to possess a similar power, or that of suspending a Regulation until the authorities in England could be consulted in cases in which any primary law of the United Kingdom should appear to be violated. Indeed, whilst the Government of India rests upon its present basis, that of a temporary possession of the territories and revenues of the East-India Company, it is neither probable nor desirable that the Crown should ever consent that the members of a legislative council appointed by the Company, should have the power of altering the constitution of the King's Courts, in opposition to the opinion of the Judges. Whatever may be the use of the Supreme Courts in other respects, their existence, whilst the Government of India is moulded in its present form, is preservative of the dormant rights of the Crown; a vast and delicate matter which I do not wish to bring into discussion.

7. The most important, perhaps, of all considerations connected with this subject is that of the review to which all the acts of such a Legislature ought to be subjected from time to time, and of the control to which it ought to be liable at all times. It is an extremely inconvenient plan to send the scheme of a law to take two voyages of 14,000 miles each, and to be approved of in England before it is to have effect in India; but it is still worse



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if it has subsequently to be tendered in India for registration. It might be provided, that every act of an Indian Legislative Council should, within one month, be sent to the Court of Directors and the Board of Commissioners, and that in the next Session after the receipt of it in England it should be laid before Parliament; and that the Court and the Board should have the power of repealing it within one year from the time of its having been made, but with a proviso that all persons should be saved harmless for any acts done under the Regulation before notice of its repeal should have been given in some specific manner. But a far more important and beneficial provision would be, that the Indian Council should, once in 7, 10, 14, or 20 years, form into one body of laws, and submit to Parliament the whole of the existing Regulations, in order that they might be sanctioned or amended. It would be desirable also to provide for the universal and accurate publication in India of all Regulations as soon as they should be passed; which perhaps would most easily be accomplished by confining to some one printing-press the privilege, that only the Regulations printed at that press should be received as evidence or taken notice of in the Courts of Justice, to which privilege, conditions for a sufficient and proper publication throughout India might be annexed.

8. As the greater number of the papers which accompanied the letter of the 14th of July relate to the constitution and to some of the proceedings of the Supreme Courts of Judicature, and many parts of them are written with great misapprehension of the subject, and in a tone of complaint, although the Governor-General in Council has not required that the Judges should reply to them, I conceive that it must have been desired that they should do so; and I will not pass them over without making an effort to produce a clearer understanding of the matter, for which purpose it will not perhaps be necessary that I should extend my remarks to any other documents than the Minute of the 19th February, and that in the Secret Department, dated April 15th, 1829. The manner in which the Judges at Calcutta are spoken of, not only in the letter of the Governor-General, but in that latter Minute, is in the highest degree gratifying to them; but they are a little at a loss how to separate entirely a part of the complaints which are made in the Minute of some of the acts of the Court from an implied censure of those by whom the Court is held. The case of William Morton against Mehdy Ali Khan, which was tried in the last year, is described as an assumption by this Court of a jurisdiction which the Legislature did not intend to confer; and it is said that a false allegation of debt was the ground of the action. It cannot be necessary for me to explain that, even if the affidavit was false, it neither shows any fault of the officers of the Court, nor any defect in its constitution. No Court can be so constituted as to be exempt from the evil consequences of perjury. But in fact there is nothing which warrants the assertion, either of the plaintiff's perjury, or of the Court having exceeded its jurisdiction. An affidavit of the debt is on the file of the Court, and has never been shown to be untrue. William Morton was nonsuited, not because he could not prove the debt, but because he could not meet some evidence of Mehdy Ali Khan's that the trade in Calcutta, which had been alleged to make him liable to the jurisdiction, belonged not to himself, but had been given by him to a young nephew, who lived in his house. The trial of that question left on my mind a very strong impression that the defence was a contrivance, and that the trade, which was very valuable and extensive, and in the course of which several ships

had been insured at offices in Calcutta, always had been, and still was, the trade of Mehdy Ali Khan himself. An information was afterwards filed against William Morton by the Advocate General of the Company for a conspiracy, on which he was rightly acquitted. The objection made in the Minute to the jurisdiction of the Court is, that Mehdy Ali Khan was not a resident inhabitant of Calcutta. It is not always easy to say with certainty what the Legislature has meant in the statutes relating to India, but I have some confidence that even in the 21 Geo. III. c. 70, s. 17, it was meant that natives carrying on trade in Calcutta, but residing in some other place under British Government in Bengal, Behar or Orissa, should be liable to be sued in Calcutta upon their contracts, express or implied. The Act of the 21 Geo. III. c. 70, was preceded by that of the 21 Geo. III. c. 65, which, in s. 28, prohibits British subjects from residing, without special license in writing, any where except at one of the principal settlements, or within ten miles of it; and I can scarcely suppose that it was intended to put even those British persons who might establish themselves at Calcutta by leave of the Company, in such a position that they could have no legal remedy against any native trader or banker of Calcutta who might choose to live on the outside of the Mahratta ditch, unless by bringing an action in some Court, which at that time might have been really "Native," and held under some Mahomedan Judge, and to which, if it should have been at more than ten miles distance, British persons had not even the power of resorting, except by obtaining a special license in writing, which they had no right to demand. If the word "inhabitants" was used advisedly in the statute of 21 Geo. III. c. 70, it must have been known to those by whom it was inserted, that its meaning in the English law is not confined to residents, and I should suppose it to have been precisely for that reason that it was chosen. Lord Coke long ago had taught, that even as early as the Statute of Bridges, the word had been applied to persons who might be residents in foreign countries. The Committees of the House of Commons in cases of controverted elections before the 21 of Geo. III. must have had the legal import of the term more frequently under consideration than that perhaps of any other; and at a more recent period Lord Eldon has explained that the construction of this word in any statute must always depend upon the nature of the subject, and that inhabitancy may refer to residence, or be wholly independent of it. At any rate, he must be a bolder Judge than I am, who at this time will declare its meaning, in the 21 Geo. III. c. 70, to be that of residence only. It has always been a common practice with the natives to carry on an extensive trade, both foreign and inland, and to deal in money and securities for money in Calcutta, by the means of servants who are not worth a farthing, whilst themselves reside at Moorshedabad, Dacca, Patna, Benares, Furruckabad, or elsewhere, and any native resident at Calcutta may of course cease to be so at any moment at which he may find it convenient to be divested of that character. There is no Court at Calcutta which has any means like the Superior Courts at Westminster, when actions are commenced in them, of providing for the trial in the provinces; so that the mercantile persons in Calcutta might have to ask licenses to go about to half the Zillah Courts of India if they were to be obliged at present to sue those with whom they deal only in the neighbourhood of their dwelling-places. To have construed the word "inhabitants," however, in the declaration against Mehdy Ali Khan in the limited sense, beyond which it seems to be thought in the Minute of the 15th of

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April that it cannot be extended, except by some operations connected with the art of magic, would not only have been to establish a precedent at variance with the principles of justice, the rules of construction of the English law, and the ordinary course of the law of merchants in most of the civilized parts of the world, but what is more to the point, it would have been an abrupt and unauthorized abolition of the established practice and unvaried usage of the Court in which the declaration, on the faith of that usage being permanent, had been filed. I do not deny that natives residing at a distance are put to inconvenience by the application to them of the word "inhabitants." When the 21 Geo. III. c. 70, was passed, the writs of the Supreme Court ran only into Bengal, Behar and Orissa; since that time the Legislature and the Court of Directors have annexed vast territories to the Presidency, and put them on the same footing as the older ones. Actions may be commenced in the Supreme Court against persons who are resident at an immense distance. The Court has no means of providing a trial any where except at Calcutta; and there is only one Sheriff for a bailiwick of more than 1,000 miles diameter. I am not contending that we are placed in convenient circumstances, but that the Court has not perverted the law.

9. The second case brought forward in the Minute of the 15th of April is one which has not been before the Judges, but in which, I believe, a British partnership in Calcutta, upon making large advances to another British firm, had taken from them a bond and warrant to confess judgment, on which judgment had been entered, and when the debtors became insolvent, the judgment creditors took out execution, and the Sheriff seized all the property of the insolvent partnership on which he could lay his hands, including some stock in trade, indigo factories and other property in the provinces. Three objections are made in the Minute against these proceedings; first, that the property taken in execution lay at a distance from the residence of the British judgment creditors, whilst there were native creditors who lived near at hand: secondly, that some of the property taken by the Sheriff had not been paid for by them, defendants: thirdly, that the awe of the Supreme Court prevented the Collectors, Judges or Magistrates of the neighbourhood from interfering with the Sheriff in the execution of his duty. I am at some loss how to answer these objections, as they apply to the Court, but certainly not on account of the reasonableness of them. As to the last of them, I can only say, that I hope a due respect for the Court may be equally effectual in other cases of the same nature. The proceedings, as far as they are stated in the Minute, or as I have any knowledge of them, were in every respect regular, and except as to the amount of the debt, ordinary. At the time of their taking place, no law of bankruptcy or insolvency had been introduced into India; and of necessity each creditor of an insolvent firm had to take care of himself; the principles of the Bankrupt Laws cannot be acted upon except where the laws exist; and it would have been found to be an extremely inconvenient substitute for them, if any one had possessed the power of deciding that the creditors should be paid in the order of their vicinity to the dispersed property of the insolvent, or that a writ of execution against moveables should itself be immoveable or restricted to the limits of the town of Calcutta. Yet, if this part of the Minute does not point at some such expedient, I am unable to perceive what was meant to be the complaint. Power is given to the Court to hear and determine suits. What sort of a determination would it be if the defendants, by removing

removing himself and his goods and chattels, during the progress of the suit, beyond the limits of the town of Calcutta, might make execution impossible, and the judgment nugatory?

10. The third is a charge of a graver complexion, if it were to be taken according to what the letter of it would imply; but I am satisfied that the Member of Council by whom the Minute was written, did not advert at the time to what was implicated in this part of it. The case adduced is, that of the King against Khodabuksh and three others, which was tried by me at the fourth sessions of Oyer and Terminer for 1828. As this has been the subject of a communication from the Judges to the Government and to the Board of Commissioners for the Affairs of India, the Members of Council are now more fully informed of it than when the Minute was written; but there is some reason to regret that, upon erroneous information respecting matters which might have been easily ascertained, and in a document which, at the time when it was written, it was not likely I should ever see, there has been involved against me an imputation of "encroachment," and that I put four men upon their trial on a capital charge, "in order to establish a principle," which is believed to be contrary to law. It is now known to the Governor-General in Council, that I had never heard of the prisoners or their crime until after the sessions had begun, and long after they had been committed to the great gaol for trial, and though I read the depositions at the time, I do not now recollect what Justice of the Peace it was before whom they were taken. I was bound to deliver the gaol, and there was no method which I should have thought myself justified in pursuing by which I could have avoided to put the culprits on their trial. I might indeed have quashed the indictment by deciding that the averment was bad in law, which stated, that persons professing the Mahomedan or Hindu religion were subjects of the King, or I might have directed the Jury, that the word "subjects," in the 26 Geo. III. c. 57, and in some others, was supposed by many persons to have a meaning peculiar to the statutes respecting India; that the evidence did not show the prisoners to be within that meaning, and that except as to persons included by that term, the Provincial Courts now claimed to have an exclusive cognizance of crimes committed beyond the boundary of Calcutta; but as neither the Advocate General of the Company nor any one else defended these prisoners, I must have taken on myself the whole of the heavy responsibility, not only of allowing, but of making this complicated defence, which would not precisely have coincided with my own opinion, and in such circumstances I am inclined to believe that those in England to whom the case will be submitted, will think that I pursued a more considerate and prudent course in referring points so doubtful and so weighty to His Majesty in Council. I am informed by the letter of the Governor-General in Council, that three of these persons had been tried and acquitted in a Provincial Court, and there was some mention on the trial of the important fact of their having been before a Provincial Court, but without a plea of acquittal. I could not enter into any evidence of it, and I had no judicial information whether any of the parties had ever been tried or arraigned, nor any legal ground upon which I could have directed the Jury to acquit any of them; for that reason my impression was that the Provincial Court had merely disclaimed the cognizance of the case in the form in which it had been brought before them.

11. The only other objection which is stated against the proceedings of the Court at

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Calcutta is, that in compelling the performance of its decrees as a Court of Equity, it sequesters the rents and profits of land in the provinces, or appoints Receivers of them ; and although it is admitted, that this is a power which has so long been exercised that it cannot now be disputed, it is said that an Advocate-General has been of opinion, that the Legislature did not intend to confer the power, but that it has been " assumed ;" and it is added, that, by the appointment of European officers of the Court as Receivers of rents and profits of estates in the provinces, the Regulations of the Government for the administration of the provinces are set at naught. The Supreme Court, under the 18th clause of the Letters Patent of 1774, is a Court of Equity, and is directed to compel obedience to its decrees in the same manner as the Chancery does in England ; whatever questions there may be as to the extent of the jurisdiction of the Court of Equity in any other respects, it is certain that full power and authority to hear and *determine* suits against the inhabitants of Calcutta, respecting their inheritance and succession to lands and rents, is expressly declared to be in the Court by 21 Geo. III. c. 70, s. 17, and in terms which make it at least questionable, whether the jurisdiction is not exclusive of all others. The most numerous and important cases which have come before the Court, as a Court of Equity, have been suits instituted by Hindus for the partition of family property. When a bill is filed for this purpose against any one liable to the jurisdiction, and who is the manager of such property, from which he excludes his coparceners, and which consists principally of Zemindaries or Talooks in the Mofussil, in what other way could the Court determine the suit than by a commission of Partition ; or in what other way could it secure for the family their share of the rents and profits during the long progress of an equity suit, than by appointing a Receiver ? It cannot be seriously meant as a more easy and convenient proceeding, that a suit should be instituted against an inhabitant of Calcutta, in each Zillah in which any of the Talooks may be ; or even that this Court, after having declared the rights of the parties to a partition, should direct them to bring a second suit against the defendant in any one other Court, and take their chance of having the same thing decreed over again with more effect ? But, even if this could be maintained as expedient, it is beyond all doubt that, according to the existing law, the Supreme Court, as a Court of Equity, must attach and imprison the person of a defendant for disobedience of its decrees or orders ; and if they should thus confine in gaol the manager of a family property in the Mofussil, is it not necessary that they should appoint some one to look after it, if it were only for the payment of the revenue ? If the suggestions of the Minute point to any one course rather than another, it is one which would leave in the gaol of Calcutta the manager of property, respecting which the rights of numerous persons might have been declared after a long and expensive litigation, but which, on the failure of the regular payments of the revenue, would be sold to the highest bidder by the Collectors of the different districts in which the lands might be, and the surplus would remain in the hands of the Collectors, to be got at by those entitled to them in the best way they could. Does the Member of Council by whom the Minute was written believe, that the Collectors would or could apportion the surplus, on the mere production of the decree of the Supreme Court, in such a way as to give their rights to the parties ; or does he desire, that in such cases the Collectors should be made defendants in the equity suit by a supplemental bill ? European officers have

never been sent to reside on estates so situated, but have managed them through native agents, and cannot by the rules of Court be appointed, except where there is no other fit and proper person to take charge. This part of the jurisdiction of the Court is exercised as the Charter directs, in the manner in which the Court of Chancery in England effects a partition, in the only manner in which at present a suit for a partition could be determined, or in which signal inconveniences and contradictions could be avoided; and if Regulations have been made by the Government subsequently to the Charter of 1774, and to the 21 Geo. III. c. 70, which are incompatible with them, it may be worth while to consider whether it is the Court which sets at naught the Regulations of the Government, or the Government which has forgotten the lawful powers of the Court.

12. The foregoing cases being the only ones stated in the minute in which the Court at Calcutta is concerned, they are perhaps the only ones on which I am entitled to speak with confidence; but I beg to add, that, as far as my knowledge extends, the censures of the proceedings of the Courts at Madras and Bombay are, in most respects, equally open to observation. Of those at Bombay which have been the subject of an appeal to the Privy Council, it would not become me to express any opinion in an official document; but as I was a Judge at Madras for nearly four years, although of the cases which are cited from that Presidency, one was entirely, and another almost entirely determined before I took my seat in the Court, I believe that I am able to fix both of them, and the practice of the Court in granting probate and administration to natives, in a juster point of view than that in which they are placed in the Minute. It is very possible, however, that I may be inaccurate in some particulars, as I can speak only from recollection, and, in most instances, merely from the information of others. All the Supreme Courts are directed by their charters to accommodate their process to the circumstances of the people and the country. This has been done in more instances than that of granting administration to natives. One instance in which it has been done beneficially at Madras is, that orders for the maintenance of native widows are made summarily upon petition, and without any suit in equity; and at Calcutta it was long the practice for the Judges to decide many disputes amongst natives out of Court, and by a summary award. The same considerations which led to such proceedings induced also the practice of allowing natives to take probate or administration, though the Courts never required them to do so; and this permission has tended very much to their ease and convenience in many respects. If a representative of a deceased native wants to collect assets from an inhabitant of Madras, or from the officers of the Company, or any other British subject, he is often enabled, by obtaining letters of administration, to avoid an equity suit, which would be his only other mode of proceeding. The British Commissioners at Madras, for the payment of the Nawaub of Arcot's debts, refused to make the payments to representatives of natives without letters of administration; and though the Court would probably have compelled them to do so, there might have been some hardship in obliging the claimants to proceed by suits in equity. It was upon a refusal, I believe, by the Treasurer of the Government to give him the benefit of Government securities which had been held by his father, that the Nawaub of Masulipatam found it necessary to apply either for probate or administration to the Supreme Court at Madras. If he had not done that, he must have filed a bill in equity, and in either case must of course have submitted himself



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to the jurisdiction of the Court, as to all questions connected with the property for the obtaining of which he had applied to the Court, and which it was his object to take out of the hands of a British subject, against whom all claimants had a right, whilst the assets remained with him, of instituting suits in that Court. There may be differences of opinion whether it has been, on the whole, beneficial and right to permit natives to take letters of administration, or it may be thought, that when such letters are granted, the best way of making the parties liable to the jurisdiction would be by their entering into a bond to that effect, which would apprise them of the extent of their liability; but I conceive that there can be no difference of opinion as to the justice or necessity of the rule, that every party who asks for, and makes use of any process of a Court, whatever it may be, for the purpose of obtaining property which he could not obtain without it, must submit to the jurisdiction of the Court in all claims and questions which may arise as to the same property, before its absolute confirmation to him. The refusal of the Treasurer made it necessary that the Nawaub of Masulipatam should proceed, in the Supreme Court, in one way or another; and in whatever way he had proceeded, he must have submitted to the decision of the Court, as to all claims upon the property which he should have brought into question before the Court. One of the cases, I believe, which is alluded to as having occurred at Madras, is that of Syed Ali and others, against Kullee Moollah Khan and the East-India Company, of which the main features were, that the Nawaub of the Carnatic having formerly granted a Jaghire to the father of Syed Ali and Kullee Moollah Khan, questions arose, on the death of the father, whether the Jaghire reverted to the British Government, which had superseded that of the Nawaub; whether it was either to descend, or to be granted anew, to Kullee Moollah Khan, as the eldest son; or whether it was not to be shared amongst the children and widow of the deceased, like any other property of Mahomedan persons. It was proved, I think, to the satisfaction of the Judges, that Kullee Moollah Khan, if on no other grounds, was liable to the jurisdiction of the Supreme Court as an inhabitant of Madras; and a suit in equity was instituted against him and the East-India Company, by his brothers, his mother, and sisters. It has since been decided on appeal, and I have no doubt rightly decided, that there was no legal or equitable ground for making the Company defendants; but this is not the objection taken in the Minute, in which it seems to be thought that the whole system of Indian Government is threatened with destruction, if grants of the Government may be subjected to the interpretation of the Supreme Courts. I can only say, that any grant of property by a King of England, though the King cannot be made a defendant to the suit, may be brought into question, and may be subjected to the interpretation of the Courts of Law and Equity, and that the interpretation of grants of property by the Indian Governments, could not be reserved to the executive branches, or, in other words, to the grantors themselves, without an utter confusion of all English notions of justice, and some very strange results. The other case, at Madras, is one about the year 1818 or 1819, in which a crime having been committed at Hyderabad, by a person who, according to the words of the Charter of the Supreme Court, was amenable to it for the crime so committed, the Court thought that they might also arrest him for it in the place where it was committed. Upon this his Majesty's Attorney and Solicitor-General in England were consulted, and it was asked whether the Court could issue compulsory process into the

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territories of a Prince "in alliance" with the Indian Government; to which the answer, as it might have been expected, was that the Court had no such power; and I have some reason to believe that the Court itself would have given the same answer to the same question, inasmuch as "alliance" implies a certain degree of independence. But if an excuse is wanted for any mistake of the Court in supposing that Hyderabad was so far a component part of what is called the British Empire in India, or so far dependent upon and subject to the British Government, that as the cognizance of crimes committed there by his Majesty's subjects clearly belonged to them, so it might also send its process thither to arrest them, such excuse may perhaps be found in the facts of the cantonment at Hyderabad being permanently occupied by the forces of the Madras Government, and of the Government being administered very much according to the will of a British functionary, who always resides there. Long subsequent to the mistake of the Madras Court, and to the opinion of the Crown lawyers, two Advocates-General of the East-India Company, together with some other persons, fell also into a mistake, that Hyderabad was so connected with the British territories, that the English laws which regulate the lending of money were in force there against British subjects; and I am told that there are some who have felt great difficulty, notwithstanding the opinion of the twelve Judges of England, in bringing themselves even now to the belief that there has been in this respect any mistake at all. In a note at p. 416 of the second volume of Mr. Henry Prinsep's History of the Administration of the Marquis of Hastings, there is a decree recorded, not judicial indeed, but executive, which from my knowledge of the moderation and love of justice of him by whom it was pronounced, and his dislike of encroachments of every sort, especially by the appointment of receivers, I am confident would not have been made if Hyderabad had been in that situation of real independence which properly entitles one state to call its relations with another an "alliance." That excellent, able and eminent person knows, that I entertain for him the highest esteem and a sincere regard, but he will permit me to say, that in his Minutes of the 19th of February and of the 15th April 1829, I find no case referred to as an irregular proceeding of the Supreme Courts, respecting which it does not appear to me that there has been a misapprehension of some fact or principle of law, which has affected the view which he has taken; and I cannot refrain from expressing a little surprise at the singular expressions which in two passages are employed to characterize the construction which has been given by the Courts to the word "inhabitants." I have already explained the grounds on which that construction is supported; it rests upon authorities so grave, that it might have been expected to escape the infliction of hard names; which, if I were inclined to resort, might perhaps be shown to apply more closely to the history of Indian politics, than to English rules of law.

13. I dare not follow the example which is set me in the Minute of defining the whole jurisdiction of the Supreme Court. Too many important and delicate points are involved and have been entangled in that matter for me to wish to decide upon them collectively. The view taken in the Minute was probably intended to be the same as that which was given by the late Mr. Charles Grant, in his note to the 34th page of his "Observations;" but there is this difference, Mr. Grant's observations, though printed later, were written in 1792, and though he does not at all deny that the natives of the provinces were then subjects of the British Crown, he keeps his definition of jurisdiction clear of any admis-



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sion to that effect. In the Minute of the 15th April 1829, they are described as subjects, and a few historical remarks will serve to show how much depends upon the fact of their being within the meaning of that term, and to how many difficulties the Supreme Court at Calcutta may be exposed in exercising a jurisdiction which in its origin was made to extend over all within this Presidency who should in any manner be subjects of the British Crown, but upon which jurisdiction there are no doubt sufficient indications that those who have framed subsequent statutes and charters for India have designed to put various restrictions. The design must be supposed to have been right; but it may be regretted that whatever was to be done in pursuance of it, should not have been made plainly intelligible, and free from all contradictions.

14. Factories established amongst the infidel people of the East have been deemed by the law of nations which has prevailed in Christendom, to be so far exclusive possessions, or at least privileged places, that all persons during their residence within them have been considered for most purposes to be clothed with the national character of the State to which the factory has belonged. In the East-Indies, as early as 1618, Sir Thomas Roe, the Ambassador of James I., had secured, by treaty with the Mogul, the privilege for the Factory at Surat, that disputes between the English only should be decided by themselves; and the East-India Company, before the end of the 17th century, had obtained and made use of the permission to build fortifications at Madras and Calcutta; and they held the island of Bombay under a grant in perpetuity from the Crown of England, to which it had been ceded in full sovereignty by Portugal. In these circumstances, although it was a remarkable step, it is not perhaps very difficult to account for the establishment, by letters patent, of Mayors and Aldermen in the 13th year of the reign of Geo. I. at Madras, Bombay, and Calcutta, who were to act as Justices of the Peace in those places, and in all the factories subordinate to them, and who were to be Courts of Record for the trial of all actions arising within those places, which should be brought against any person who should reside there at the time of action brought, or of the cause of action accruing. I will not venture to say whether in these letters patent, or in those which with some alterations were substituted for them in 1753, there was any intention on the part of the Crown to assert any territorial dominion. In the Charter of 1753, although there was no precedent for it in the Charter of 1726, there was introduced an express exception from the jurisdiction of the Mayor's Courts, of such actions as should be between the Indian natives only, which were directed to be determined among themselves. In 1765, however, the grant of the Dewanny made a complete revolution in Bengal. It put into the hands of the Company all the actual powers of Government; and it is well known to what differences of opinion this acquisition gave rise in England. Without resting the decision which was made in 1773 upon any critical arguments of law, or on any positive opinion of expediency, there are a few plain positions and glaring consequences, from which it seems to result, that a part of the determination which was come to was quite necessary; namely, that the right should be asserted of the British Crown and Parliament to regulate the powers of Government, which had been acquired by the Company in India. Before the Dewanny was obtained, the Company had been established for more than a century and a half in India, under charters from the British Crown and Acts of Parliament, which, for the increase of the navigation and merchandize of the nation, had given them, for so long as it should conduce to

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that object, an exclusive right of trade in all places between the Cape of Good Hope and the Straits of Magellan, and had deprived the rest of the British people, for the same time, of the liberty of trading on three-fourths of the sea-coasts of the whole globe. It could not have been reconciled with justice or reason that opportunities so given should have terminated in 1765 in the establishment of the Company as officers of a foreign state, still less as independent sovereigns; and if any doubt had been tolerated as to the entire dependence of the Company upon the Parliament, it is difficult to say what might not have happened during the troubled times of England which followed the period of the acquisition of the Dewanny. The British people might possibly have found themselves excluded from trade with India, not for a time, but for ever; not by their own act and with their own consent, but against it, and by those who had, indeed, been their fellow-subjects, but were now become independent of them. Therefore, though I do not wish to be considered as assenting to all that was said or done about that time, the Resolution of the House of Commons on the 5th of April 1773, the statute of the 13 Geo. III. and the Charter of Justice of 1774, appear to me to have been rightly founded, in every part of them, upon the principles, that whatever the Company had in India, they held as British subjects, that all their lawful powers of government were subordinate to the sovereign powers of the British Crown, and that in every respect they were liable to the legislative control of the British Parliament; and in whatever manner it may afterwards have been thought expedient to disguise the real state of things, it seems to me to have been a necessary and immediate result of the grant of the Dewanny; that all the sovereign rights of the Mogul Emperor in Bengal, Behar and Orissa, which would have remained in him if the grant had been to any of his own subjects, were transferred to the British Crown and Parliament; that the territory became British dominion, and the inhabitants subjects of his Majesty, but the mass of them subjects only as far as it was consistent with the laws of England that Hindus and Mahomedans could be subjects. The single and plain ground on which I would rest these propositions is, that when the Mogul put a Company of British subjects into the possession of territories and powers which might be made use of to defeat the very purpose and object of that political existence which had been given to them by their own King and Parliament, there accrued to that King and Parliament, as a necessary consequence, a right of assuming the whole sovereignty, without which the Company could not be controlled. The Mogul had no right to make them, the Company had no right to make themselves, dependent upon him or independent of their own country; in either of which cases it might, and according to the ordinary course of human affairs must have come to pass in time, that they would have been called upon to wage war against the very land which had sent them forth to augment its own prosperity.

15. If all circumstances had admitted of this state of the case being manifested and declared in 1773, though such a course might have been subject to hazard, it would probably have saved an infinity of trouble in the end, and many of the perplexities which have been the offspring of a double and fictitious system of government. The grant of the Dewanny included not only the holding of Dewanny Courts, but virtually the Nizamut also, the right of superintending the whole administration of law in Bengal, Behar and Orissa, as it was vested in Shah Aulum in 1765. This is avowed in the

letters of Lord Clive, and this is only a part of the claim of the Company themselves, in the case made for them upon the appeal of Mr. Buckingham against the press regulation. There were motives, however, which are very intelligibly explained in Lord Clive's letter of the 30th September 1765, which had made it convenient for a time that the Nawaub should appear to retain the Nizamut, or superintendence of the administration of justice; and accordingly, when Shah Aulum gave the Dewanny to the Company, it had been agreed at their request that he should put the Nizamut into the hands of the Nawaub, who at the same time entered into an agreement to take a fixed annual allowance from the Company to enable him to carry it on. He was in fact from thenceforth no other than a native officer of the Company; he held his courts only at their will and pleasure, and they exercised the power of regulating and altering them. Something had been done in this way between 1768 and 1772. In that year, Mr. Sullivan, the Deputy Chairman of the Company, brought into the English House of Commons a Bill for the due administration of justice in Bengal. I have never seen this bill at full length; but I collect from the accounts of it in cotemporary publications, that with the important difference that the appointment of Judges was to have been by the Company, its provisions for a new Court were in a great many respects similar to the Letters Patent of 1774,\* but that all Christian persons were to have been subject to the jurisdiction of the new Court, and to have been exempted from those of the Nawaub. When this plan of the Company was thwarted, and the Supreme Court was established in 1774, the distinction of Christians was left out, and the only criterion of personal liability to the jurisdiction which is to be found in the statute of 13 Geo. III. c. 63, on which the Charter of 1774 is founded, is that of subjection to the British Crown. In s. 14, all who are "his Majesty's subjects" are made liable. It has been contended, indeed, that even in this statute it was intended to make a distinction between subjects born in the British islands, or their descendants, and the other natural-born subjects of the Crown, and that it was the former only who were made liable to the jurisdiction of the Supreme Court. But this appears to me to be an erroneous notion, and one that has been the cause of some of the confusion which adheres to the whole system of the Indian statutes. The only difference of meaning which will be found in the use, at that time, of the two phrases, "subjects" and "British subjects," is, that the latter appears to have designated those who were permanently and to all intents and purposes British subjects, whilst the former included such foreigners as, in consequence of their residence in any British territory, possession or factory, were to be considered, according to well-known rules of international law, to be clothed temporarily and for certain purposes with the character of subjects of his Majesty. The Charter of 1774 made even these liable to be sued or prosecuted; but it was to British subjects only, or absolute and permanent subjects, if I may so express myself, that certain rights and duties, such as that of sitting on juries, were restricted. No legal grounds will be found for affixing at that time any other meaning than this their obvious one to these terms: and unless we consider the term "subjects" in 13 Geo. III. c. 63, s. 14, and in the 13th clause of the Letters Patent, to have had a more extended sense than that of persons of British birth or descent, and to have included foreigners,

\* See Governor Johnstone's Speech in the Debate on the 30th March 1772.

foreigners, whether Indian or European, resident in Calcutta or any British Factory in Bengal, Behar or Orissa, there is nothing either in that statute or in the Charter itself which can be considered as giving the Court jurisdiction to entertain any actions against them, except in cases in which the Mayor's Court had before possessed such authority under the Letters Patent of 1753, and this would not have included the native inhabitants of Calcutta. The distinction which it has been attempted to establish between natives of the island of Great Britain and the Christian natives of the rest of his Majesty's dominions, is an unlucky gloss of a later period, and founded upon an expression, which I am inclined to suppose a careless one, in the statute of the 21 Geo. III. c. 70. Unfortunately the indistinctness of the views which were taken by the British Legislature of the nature and relations of the territorial acquisitions of the Company, and the show of a Native Government, which the Company were permitted for their supposed convenience to keep up, preventing all explanations of the use of the term "subjects," in the 13 Geo. III. c. 63, and indeed if those obstacles had not existed, a submission to Parliament of the question how far any other than Christians can be subjects, might have received all the agitation which had been produced by the bill for naturalizing Jews in 1753. Accordingly there is not either in the statute of the 13 Geo. III. c. 63, nor in the charter of 1774, any declaration who are and who are not subjects, nor whether any of the territorial acquisitions amounted to an acquisition of the territory itself, or to anything more than powers to be exercised within territories of the Mogul, nor whether even Calcutta itself was so much within the allegiance that persons born there would be natural-born subjects of the British Crown. These questions were left to be determined by the general principles of English law, whenever they might arise; but subject to such determination there was a jurisdiction given to the Court, first, over all persons whatsoever during their residence in any British territory, possession or factory, which there might be within Bengal, Behar or Orissa; secondly, over all natural-born subjects, or others having indefeasibly the character of subjects of the British Crown, and over persons in their service within Bengal, Behar or Orissa, whether the place in which they might be were a British territory, possession or factory, or a place belonging to some Indian Prince, but under the protection of the Company. The intention was to have secured to the Crown a supremacy in the whole administration of justice; but the provisions made were inadequate to the attainment of the object, and have been defeated; and I do not mean to say that the policy of later years may not have been wiser than that of 1773, I only trace the course of these events.

16. Though it might not be convenient that the whole of Bengal, Behar and Orissa, should be taken to be British territories in 1774, those and all the other provinces which constitute the Presidency of Fort William, must be known to be so now; and if there are reasons of state which ought still to discourage the avowal or manifestation of that fact, those territories are (beyond all possibility of concealment) so much more than factories, and so visibly British possessions and dependencies, that, subject to any questions connected with religion, all the inhabitants of them during their residence must owe a temporary allegiance, and must be for the time "subjects" according to all the ordinary rules either of British or international law. I will not fatigue those to whom this paper is addressed by a string of statutes and other acts of state, in which the

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Indian Presidencies are designated as possessions of the kingdom of Great Britain and Ireland, or as British territories, nor will I do more than barely advert to the opinion of the Court of King's Bench in England on the question whether they were within the Navigation Laws; or to the declarations in the 53 Geo. III. c. 155, of the sovereignty of the British Crown over all the territorial acquisitions; nor to that proclamation of a former Governor-General, which we are told by a highly-distinguished historian,\* was hailed with satisfaction by every Prince and Chief of India, when the supremacy of the British Government was asserted, and somebody, but I cannot undertake to say with precision who it was, reluctantly assumed the duties of "Lord Paramount of this Continent." To satisfy the Governor-General in Council of the difficulties which a court of law must find in treating the Bengal Provinces as any thing less than British territories or possessions, of such a description that Christian persons born in them are natural-born subjects of the British Crown, and that foreigners residing within them are subjects during the time of their residence, it may be sufficient for me to bring to their notice some decisions of a venerable person whom I have been accustomed to consider of authority almost oracular in questions of the *droit public*, and of the law of nations. In the year 1800, Sir William Scott held that there was no sovereignty in the Mogul which interfered with the actual sovereignty of the British State, exercised through the East-India Company; that the territories were British territories; and that the law of treason would apply in full force to Europeans living there. He seemed to consider that the Hindu and Mahomedan inhabitants of those territories were in somewhat the same relation of subjection to the British Crown as Jews in England; but that an American merchant residing there was as fully clothed with the British national character for the time of his residence, as if he were in England; and Sir William Scott founded this decision, in some degree, upon information obtained from Sir Robert Chambers, whom he had consulted, and who had recently returned to England after having been many years Chief Justice at Calcutta.—*The Case of the Indian Chief*, 3 Rob. Adm. Rep. 28. In the House of Lords, August 12th, 1801, on the ground of Madras being a part of the British dominions, and that all foreigners resident there incurred the obligations of British subjects, it was decided in affirmance, I believe, of a judgment of Sir W. Scott's, that any permission given by the East-India Company or the Indian Governments, without the sanction of the Crown, to American inhabitants of Madras, that they might trade with the port of a country at war with England, was void, 3 Rob. Adm. Rep. App. B. 7. In 1806 Sir William Scott inclined to think that the possessions of the East-India Company were within the terms of the Order of Council of 1665, declaring a particular right of the Lord High Admiral to extend to all places "within the Kingdom of England."—*The Maria Françoise*, 6 Rob. Adm. Rep. 288, &c.

17. Upon these grounds and authorities I could not come to any other conclusion than that, if the Act of the 13 Geo. III. c. 63, and the Charter of Justice of 1774, which are the foundations of this Court, were at this time to be interpreted by themselves, and not in reference to a scattered flight of subsequent enactments and ordinances, the Court, throughout the provinces which constitute this Presidency, would have a jurisdiction, however inconvenient,

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over all persons, who, according to the ordinary rules of English law, should be subjects of the Crown, whether absolutely or temporarily. But it is scarcely necessary for me to say that I do not consider the Court to possess that jurisdiction in such a way as to be used for any practical purposes at the present time. I am desirous only to point out the course and manner in which the constitution of the Court has been effected; to establish the fact, that it is only by the Court that encroachments have been made, and to make the Governor-General in Council aware of the situation in which it is now placed.

18. The first obstacle which the Court encountered upon its establishment in this country, was the upholding of the Nizamut under the Nawab and his native officers in a state of complete independence of it. It is not to be doubted that if Mr. Sullivan's bill had passed, it was the intention of the Company to have brought the whole of the Native Courts into subordination to it, and long before this time it would have been done. When the present Supreme Court was substituted the jurisdiction similar to that of the King's Bench which was given to it, and indeed its very title and the objects of the whole charter shewed that it was supposed there would have been inferior Courts subjected to its superintendence. A system correspondent to such intentions could not have been established without the cordial co-operation of the Governor-General and Council of the time, and probably it ought not to have been attempted but by very slow and cautious steps, and supplementary enactments must have been made for securing the Hindus and Mahomedans against an abrupt demolition of their customs and usages. But instead of any preparations of such a tendency, all things were maintained in a posture rather of opposition than merely of separation. It is well known what disgraceful scenes of discord and confusion ensued, and I have no inclination to defend the spirit and manner of the proceedings of the Judges of the Supreme Court, nor even to assert that the supremacy of the Court had been sufficiently provided for by any practicable scheme. But this I must say in justification of the Judges, that there was not that co-operation which they had expected from the Government; that the re-establishment in 1774 of the Nizamut at Moorshedabad in its old form, was not a symptom of any inclination to promote that subordination of the Provincial Courts, which, I believe, was looked for, and would have been gradually accomplished, if the Supreme Court had been a Court of the Company; and that if the Judges caused mischief by an exercise of their powers in the provinces, a state of circumstances was presented to them, in which they had but the alternative of abandoning that part of their commission. In the Minute of the 15th of April, it seems to be taken for granted that the Judges overstepped their jurisdiction, and that the 21 Geo. III. c. 70, was passed for that reason, but the Act was passed, not because the jurisdiction had been exceeded, but because it had been found difficult to exercise it without conflict with the Provincial Courts and the Government. The 28th section provides indeed an indemnity for the Governor-General in Council and the Advocate-General, for their transgressions of the law in opposition to the Judges, but no such indemnity will be found to have been granted or required for the Judges themselves.

19. The most important part of the Act of the 21 Geo. III. c. 70, is the acknowledgment by the Parliament of Provincial Courts existing independently of the Supreme Court, and the declaration of the expediency and justice of preserving to the Hindus and

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Mahomedans their peculiar laws and usages. Many circumstances contributed at the time to incline the Parliament to this course, and to these it may be useful to advert, as casting light upon the meaning of the Act. The nation was struggling with the American war, the experiment of the Supreme Court had not answered expectations, and had occasioned inconvenience; it was plain, that the attempt to introduce an English superintendence of the law on the part of the Crown had been made without any sufficient scheme or due preparation; a plan which might have been carried forward, if it had been promoted by the Company as their own, had failed when imposed against their will. The Ministers, to use a homely phrase, when they thought they had secured the administration of justice to the Crown, had reckoned without their host. In some instances the collection of the revenue in India, on which every thing depended, had been impeded by the dissensions which had taken place. Perhaps also it was thought desirable, in the impending treaties with the maritime states of Europe, that India should bear as little as possible the character of a possession of the Crown. Some things in the Act are stated plainly enough. The Court is not to have jurisdiction in any matter concerning the revenue; and, except in certain specified cases, no person is to be subject to the jurisdiction of the Court by reason of his being a land-holder, nor of his being employed by a British subject. The existence of the Provincial Courts is not only recognised, but the Governor-General in Council is confirmed as a Court of Appeal, with a power of making regulations for them. But in this Act, as in the former one, there is no plain statement of the relation in which the Indian territories stood to the British Crown, nor whether any Indian natives were to be comprehended under the term "subjects," nor whether the Provincial Courts were to have a concurrent jurisdiction with the Supreme Court, or an exclusive one; nor, if the latter, what were to be the limits of it. The phrase "British subjects" is indeed used in this Act, and that of 21 Geo. III. c. 63, in such a way as necessarily to exclude from it the Hindu and Mahomedan inhabitants; but it is so used, that, with respect at least to subjects not being natives of Great Britain, or India, subsequent glosses have made it almost impossible to affix any definite understanding to it. In the 21 Geo. III. c. 65, s. 28, British subjects in the service of the Company, or licensed by them, are forbidden to reside, except under special license, at any other place than some principal settlement, or within ten miles of it; and by the 21 Geo. III. c. 70, ss. 13, 14, the obligation is imposed on British subjects of registering the names of their native stewards, partners, or agents. This is sufficient to show that the term was not intended to apply to the Hindus and Mahomedans; but when we endeavour to ascertain those to whom it was intended to apply, we find considerable difficulties. In section 24, it is used only in opposition to "natives," and might be considered as comprehending at least all the subjects of Great Britain born out of India, and this would be consistent with the use of the same words in section 3; but this interpretation is, in some degree, made doubtful by the use of the phrase "British European subjects," in section 16, which looks as if there might be "British Indian subjects," or else that British American, and West-Indian subjects were not included in it; and then in section 10, it is so expressed, that it has been recently supposed that it was meant to limit the meaning of the term "British subjects" to natives, or the descendants in the paternal line of natives of the island of Great Britain. This clause has made, and, unless it be explained by the Parliament, seems to be likely to make

make sad confusion. It is utterly out of the question to give it effect; according to the very letter. Unless there was some contemporaneous act of the Irish Parliament, it would exclude natives of Ireland, and my own opinion is, that it either was carelessly used, and that in the interpretation of it by courts of law, a more extended sense must be given to the words "Great Britain," so as to include the territories of Great Britain as fully as they are included in the 129th section of the 33 Geo. III. c. 52; or if it be possible to suppose that an intentional use of the term in its literal sense may be accounted for at that time by the fact of a large portion of the subjects of the Crown being then in a state of open revolt and civil war, the influence of an expression thus used upon a transient occasion, ought not to be preserved and carried down for the purpose of warping so important a matter as the meaning of the phrase "British subjects" in subsequent statutes. To my great surprise, however, I have been told, that two learned persons, whom I hold in the highest respect, and who have had unusual opportunities of becoming acquainted with India and its established relations with the United Kingdom, have recommended, upon the ground of its being in accordance with the general understanding of the term in India, that if a declaratory act should explain the meaning of "British subjects," it should be limited to those who have been born in Great Britain, or perhaps in Ireland, or who can prove a pedigree in the paternal line from a native of one or other of those islands. This would exclude from the class of British subjects, and in a great measure from the rights and obligations of British law in India, the natives of Guernsey and Jersey, of Jamaica, Barbadoes or Canada, or the Cape of Good Hope, of whom there may always be many in his Majesty's army, in the profession of the law, or engaged in merchandize; and it would put them in the same relation to the law, in most respects, as the Hindu and Mahomedan races. This would be an innovation, I apprehend, of a very serious nature in the system of laws by which the colonies and dependencies of England are bound to the mother country and the throne. Nor is it only the natural-born subjects whom it would affect, but all who may become subjects by cession or conquest. This is a case now pending in the Supreme Court, in which the fortune of a young person, who has returned to India after being educated in England, is in the hands of the Court, and is of very considerable amount. The Court can scarcely stir a step in the matter without deciding whether the father of the infant is liable to its jurisdiction; and unless he is so, it will be impossible to make a satisfactory decree. This father is a Christian inhabitant of Chinsurah, of Dutch descent, and is believed to have been born there before its cession to the British, and whilst it was a Dutch settlement. Is this man now one of those persons "who have heretofore been distinguished by the appellation of British subjects?" If not, has the Provincial Court, which was established for the preservation of Hindu and Mahomedan laws and usages, an exclusive jurisdiction over him? Is the infant to seek there a decree which she cannot obtain in the Supreme Court; and what is the Supreme Court to do with the fortune of which it has taken charge, and respecting which it cannot make any sufficient decree without having the father before it? Other questions of a very serious nature are connected with these. Would the Governments of France or America think that one of their subjects, of whom there are many in the provinces, had been treated according to the "Comity of Nations," if he were to be convicted of an offence in a Provincial Court, which would be incompetent to try an Englishman, who



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who would be entitled under a similar charge to be tried by a Jury and by European laws?

20. Subsequently to the 21 Geo. III. c. 70, further doubt has been thrown upon the meaning of the terms "subjects" and "British subjects" by the various applications which have been made of them in statutes and charters relating to India. I cannot undertake to enumerate at present all these instances, and a few will be sufficient for my purpose. Where the word "subjects" has been used alone, as in the 26 Geo. III. c. 57, s. 29, it would seem to have been meant to be taken in its fullest sense. Suppose a Bengal Lascar, belonging to one of the Company's ships, murders one of the crew on shore, in the island of Johanna or Sumatra, would it not be within the remedy intended to be provided by that Act, that he should be amenable to the Court of Oyer and Terminer at Calcutta, upon the ship's arrival in that port? Yet, if this be so, it makes it extremely difficult to say that the same Court has not under that Act, if in no other way, a concurrent jurisdiction with the Provincial Courts over the Hindu and Mahomedan natives of the provinces under British Government. There is still more difficulty, however, as to the application of the phrase "*British subjects*." In the 24 Geo. III. c. 25, s. 37, these words include all for whom relief is provided as creditors of the Nabob of Arcot. In the 24 Geo. III. c. 25, ss. 45, 50, 64, and the 26 Geo. III. c. 57, ss. 1, 30, and the 35 Geo. III. c. 52, s. 62, they are used to describe all against whom penalties are given for corruption or extortion. In the 33 Geo. III. c. 52, s. 98, which is connected with 53 Geo. III. c. 155, s. 108, British subjects are prohibited from residing at more than ten miles distance from one of the principal settlements, and these clauses have so plainly a connection with the 33 Geo. III. c. 52, s. 129, that it would be impossible to affix any less extended meaning to the words as they are used in them than that which is given in s. 129, namely, subjects of his Majesty, of or belonging to Great Britain, or the Islands of Jersey, Guernsey, Alderney, Sark, or Man, or Faro Isles, or to any of his Majesty's colonies, islands or plantations in America or the West-Indies; and I take it to be certain, though I have not the Irish statutes at hand, that the Acts which were passed by the Irish Parliament about the same time as the 33 Geo. III. c. 52, placed natives of Ireland exactly in the same predicament as those of *Great Britain* and its dependencies; and if this be so, there would be no good ground on which the natives of any African colony or of New South Wales, the Mauritius or Ceylon, could now be distinguished from the rest. In the 39 and 40 Geo. III. c. 79, s. 2, and in the 53 Geo. III. c. 155, ss. 105, 106, 107, the term "*British subjects*" seems also to be used in opposition only to natives of India, to include all subjects not born in India, and to exclude all who are born there, which, however, must necessarily be subject to an exception which is to be understood, though it be not expressed, of those who are British subjects in right of a British father or paternal grandfather; but in the 40th section of the last-mentioned Act, the words "without the limits of the Company's Charter" leave it again doubtful, whether, in that statute, natives of the Cape of Good Hope, New South Wales, or Ceylon or the Mauritius, are or are not meant to be included by the term "*British subjects*." The expediency of affixing some precise meaning to these terms has been much more urgent than it was at an earlier period, since the Charters of the Madras and Bombay Courts have expressly limited the

the jurisdiction of those Courts in certain cases to such persons as have been heretofore described and distinguished by the appellation of "British subjects." It would seem that it is only the representatives of such persons who can demand to have the assistance of the ecclesiastical Court at either place, and that even the representatives of a Christian inhabitant of Madras, if he was not within that appellation of "British subjects" during his life, could not insist upon having either probate or administration, though I know that it has been the constant practice to grant both upon request, even to the representatives of the Hindu or Mahomedan inhabitants. I have adduced only a small portion of the instances in which this important expression of "British subjects" is vaguely applied in the statutes, and it is not only by the statutes that it may be shown how little there is of any general understanding of the meaning of it. The Charter of Charles II. in 1669, purports to make all the inhabitants of Bombay, and their descendants, British subjects, and seems to have intended to confer the same right on the inhabitants of other places which might subsequently be acquired by the East-India Company. The convention with France, dated at Versailles, August 31st, 1787, stipulated that Frenchmen should have the same advantages in India in the administration of justice as his Majesty's subjects. I forbear to make any inquiry as to later treaties. In a work which I have heard attributed to Sir John Macpherson, a former Governor-General of India, and which was published in 1793 for the information of Parliament at that period, it is repeatedly stated that Armenians and Frenchmen in India are British subjects. Sir Christopher Robinson, in his Admiralty Reports, is led to suppose, by the use made of the terms by Sir William Jones, that they include all the inhabitants of the provinces; and in a case, in the third volume of the Reports of the Court of Nizamut Adawlut, recently published, I find one of the Judges, and the very accurate and able reporter, using the term as synonymous with the expression of "native subjects of the British Government," which occurs in Regulation V. of 1809. Perhaps, if I were asked what I myself should say approached to a criterion of any question, whether a person is within the meaning of this expression as it is used in the statutes and the later charters, it would be, "whether he is a subject by any other title than that of birth within British India;" and that, if he is a subject in any other way, he is a British subject according to the meaning of the Madras and Bombay Charters; but that, if he has no other claim than that of birth in British India, he is not. But this rule includes more persons as British subjects than the Company's advocates admit to be of that description; and it excludes some whom I regret to see excluded. I have a strong opinion of the impolicy of establishing a name and test, which is to make of the illegitimate children of Englishmen, and other Christian persons, a separate and inferior class; and the Act of the 21 Geo. III. c. 70, out of which all these perplexing distinctions have sprung, had but for its avowed object the securing to the Hindu and Mahomedan inhabitants their ancient laws and privileges, and was not apparently intended to affect any rights of the Christian population, for whom it made no provisions, and who, consequently, if they are not under the jurisdiction of the Supreme Courts, can scarcely be said at present to live under any positive law at all. This uncertainty extends its mischievous influence in many ways. If Christians born in the provinces are not to be included in the term "subjects," it would seem to follow that the provinces, even now,

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are not regarded by the Parliament as properly and strictly British territories ; and if not, the questions, which of late have been made as to the powers which the Supreme Court has hitherto exercised, as necessarily incidental to the most limited construction of its jurisdiction, would come to be of real difficulty. The Minute of the 15th April complains of the appointment of receivers of rents in the provinces, and even of writs of *fiere facias* against the goods of British persons being executed there ; and at Bombay it seems to be maintained, that the Court, without leave of the Governor in Council, cannot compel the attendance of a native inhabitant of the provinces as a witness, even on an indictment. I have always supposed, and still maintain, that these powers and others are necessarily incidental to the determination, by the Supreme Courts, of any causes at all ; but if the provinces are territories of so anomalous a character, that Christian persons born there have not the name of subjects in the British statutes, I should not feel quite sure what arguments might be sustained upon the other questions. The illustration of the doubts in which the jurisdiction of all the Courts in India is now involved might be extended much further. I understand it to have been decided, that the Court at Bombay has no right to issue a *habeas corpus ad subjiciendum*, nor other mandatory writs, to native inhabitants not liable to what is termed its ordinary jurisdiction. Now, taking the ordinary jurisdiction of the Court to be over British subjects, and those in their service throughout the whole Presidency, and over all persons whilst they are inhabitants of the island of Bombay, what persons are they over whom it retains any extraordinary jurisdiction after this decision, and what is the nature of that extraordinary jurisdiction ? Who are those liable to it ? Who are meant to be included in the Admiralty jurisdiction of the Court by the 53 Geo. III., c. 155, s. 110, and to be excluded from it by the Bombay Charter, in the clause which may be found in the printed copies at p. 43 ? The direct contradiction between the statute, and this part of a Charter granted eleven years after the passing of the Act, is only another instance similar to that which I noticed in the first paragraph of this paper, relating to the revenue ; and I could adduce others. Both of the statutes which authorized the Charters of the Madras and Bombay Courts, expressly provided that they should have the same powers as the Court at Fort William, but the Charters themselves purport to give powers much more limited. In this case, are the statutes, or the Charters made under them, to prevail ; and how far do the Charters of the new Courts affect that of the older one ? Are the limitations on the powers of the new Courts void, as giving powers different from those of the Calcutta Court ; or are the powers of the Calcutta Court altered by the Charters of the new Courts ? An instance of the importance of these questions is presented by the opposition recently made at Bombay by the Government, to the writ issued into the provinces for the purpose of compelling the production of a native witness. There is a clause in the Madras and Bombay Charters, which purports to prohibit the Courts from compelling the attendance of native witnesses, at least in civil cases, in any other way than they would be compelled to attend a Native Court. This is resolving the necessity of attendance into the will of the Governor in Council, who can regulate as he pleases the practices of the Native Courts. Then is this clause restrictive to that extent of the process of the Court at Fort William, as well as at Bombay, or is it restrictive of neither ? The question is not whether the Courts, in a matter of pure discretion, will attend to such an indication of what has been

thought

thought right by those who advised his Majesty in the wording of the Letters Patent ; but whether the Courts have or have not a right to refuse a *subpoena* or a *habeas corpus ad testificandum* to a suitor, a dependant, a prosecutor, or a culprit ; and whether, upon a mandamus issued under the statute of 24 Geo. III. c. 25, by the Court of King's Bench in England, directing the Judges in India to take evidence in a suit pending in England, they would be authorized to state, in their return to the mandamus, that they had declined to procure the attendance of some important witness, because it would not have been consistent with the rules of practice established by the Governments for the Provincial Courts.

21. Enough perhaps has been said to make it understood, that it has not been my purpose, in this paper, to extol the present constitution of the Supreme Court, nor to maintain that its jurisdiction is conveniently settled. But I could not dismiss the papers which have been laid before the Judges, without showing, that so far from encroachments having been made by this Court, the Court which was intended at first to have been in reality a Supreme Court, has in fact no Court below it except the Court of Requests, not even a single Court of Quarter Sessions having been called into operation ; that whatever alterations have been made of the powers of the Court, have had the effect, not of enlarging, but of restricting them ; that this has not been done in a direct and manifest way ; but the original Charter has remained unrevoked, and its provisions, intended for a very different state of things than the present, are now to be construed in conjunction with a variety of subsequent laws, through which it has from time to time been indirectly and uncertainly influenced ; sometimes by the setting up of counter institutions, susceptible of perpetual modification by the Government alone, and without its having been made clear whether they were to have concurrent or exclusive jurisdictions ; sometimes by declarations of a part of the jurisdiction of the Supreme Court, in such a way as to leave it to be doubtfully inferred that the *expressio unius* was meant to be the *exclusio alterius* ; sometimes by ordinances, which, to persons unacquainted with India, may have borne the appearance of being simple and of little consequence, but in which the most important consequences have been involved ; sometimes by flat contradictions, which the Judges are to reconcile as well as they can. In addition to all this, by the obscurity in which the dominion of the Indian territories has been left, and by the uncertain use of the terms " subjects " and " British subjects," the very alphabet, or at least the elementary terms in which the limits of the jurisdiction must be expressed, have been made as it were a foreign tongue. I blame no one for this, but I confess that it rather exceeds my patience to find the Court blamed for the inconvenience which has been the consequence of it. I am deeply sensible of the extreme difficulty of legislating by Act of Parliament or Letters Patent upon the internal affairs of India ; I readily admit that the first establishment of the Supreme Court at Calcutta was hastily and improvidently made, and that it stood in need of corrective or supplementary enactments ; but I cannot acquiesce in imputations of encroachment against the Judges, because the laws, which they are sworn to declare, have been imperfectly adapted to the circumstances in which they are to operate ; such as they are, I have been contented to make the best of them,

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• See also 26 Geo. III., 87, 88 ; and 1 Geo. IV., 109.

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"*Quæ usui obtinere si non bona, apta saltem inter se sunt*," and by something like a spontaneous adaptation of imperfections to each other, the anomalies of Anglo-Indian law, of which but a small part is comprised in the foregoing statement, have had less of evil effect than might be imagined. I have now assisted for eight years in two of the Supreme Courts, without witnessing in them any difference with the Indian Governments, and without having found it necessary to ask for assistance or remedial interference from any of the authorities at home, nor should I have thought now of detailing the embarrassments which are incidental to the discharge of the duties of my office, if it had been possible to dismiss without observation the remarks upon the Courts which the Governor-General in Council, with a fairness which I feel to be a substantial obligation, has permitted the Judges to read. Having gone into the subject, I will add, that the defective arrangements under which it has hitherto been possible to act, it may be more difficult to manage hereafter. The opening of the trade to India has necessarily produced, by degrees, a greater intercourse between the inhabitants of India and those of the rest of the world, that intercourse could not continue long without other persons than the natives finding their way into the provinces, and abiding there; the Provincial Courts in the course of half a century have been gradually acquiring strength and consistency; there was obtained for them, some time ago, a concurrent jurisdiction with the Supreme Courts in some cases, and claims are now made by members of the Governments that their old jurisdiction is exclusive of all other, even to the extent of prohibiting the process of the Supreme Courts from running into the territories within which the Provincial Courts act. At Bombay, the Governor in Council and the Court have recently been in open conflict, and even here, where a perfect good will has subsisted, powers, without which it would be impossible for the Supreme Court to decide any suits at all, or to comply with peremptory enactments of the Parliament, are called in question and impugned. Of the inconveniences which exist, and which in these circumstances must increase, I am so far from thinking that the papers sent to us by the Governor-General in Council have in any way presented an exaggerated statement, that I am satisfied they do not advert to the most important of them. It may be sufficient to say, that in the Ship Registry and the Mutiny Acts there are several which have not been mentioned.

22. It is not without much hesitation that I proceed to suggest remedies for these evils. I have no means of learning here the views of those to whom it belongs to give any new forms to the Government of India, and what these may be will probably be determined by circumstances of political expediency, which are beyond the horizon of the point at which I stand; there are some whom it is likely I may offend by the plainness with which I must state my opinions if I state them at all. But I apprehend it to have been the wish of the Governor-General in Council, that any view which might be given of existing defects should be accompanied by a corresponding view of arrangements adopted for their removal. There is one method proposed in the Minute of the 15th of April which is at least simple, and which would effectually avoid the necessity of any further arrangements; namely, that all the proceedings of the Courts should be according to the will of the Government. The surprise with which I first read this made me read it more than once, and if it is possible to construe it as meaning only, that the process of the Courts, and with some exceptions the laws which they have to administer, should be liable to be altered from time to time, when they should have been found inconvenient,

inconvenient, by a well constituted Legislative Council in India, which should itself be really subordinate and accountable to the Crown and Parliament, my assent to it has been already expressed; but if, as the language of the Minute seems to import, it is intended that the judgments and orders of the Supreme Courts, though made according to law, should have effect only by the permission of some other branch of the Government to be given afterwards, or even that the Governor-General in Council, as at present constituted, should have the right of altering and limiting the powers or process of the Courts, I beg that my dissent from that plan, and an humble protest against it, may be considered as expressed by me in the most unequivocal and strongest terms. I know that the Governor-General in Council may even now make what orders he pleases in his official capacity, and that there is no tribunal in India to which he is answerable, and that this immunity is in a great measure extended to those who act under such orders. I am well aware also, that the Courts of Justice have no means of enforcing the laws which they declare, unless the Government be pleased to assist them; but at present a grave responsibility, in theory at least, is annexed to any refusal to assist in carrying the law into execution, and a more serious one to any positive opposition to it, and neither the one nor the other, I apprehend, would be deemed justifiable in the British Parliament, except upon the ground of urgent circumstances. But the object of the Minute of the 15th of April, if I understand it, is that an interference of the Government with the proceedings of the Courts should be an ordinary operation, and should extend to the annulling of judgments already made, subject only to the general responsibility which is attached to all other acts of Government. Of this I never can express an approbation, until I am told by the sole competent authority, that it has been thought right to make the sovereignty of the King in Parliament only nominal in India, and that there shall be no law there which is not liable to be altered by the executive branch, and not only with prospective but retrospective effect. The Governor-General in Council is, both in the theory and practice, almost entirely the organ of the Company. The Commander-in-chief, who according to usage is one of the Council, is also indeed an officer of the Crown; and the Governor-General is only for a time connected with the Company, and in rare instances, a person may be found in that situation who has been in India before, and who has talents, information and firmness, which enable him to act in a great measure by himself, but in the long run it is the Company which gives the whole tone and character to the acts of the Government. The President and Board of Commissioners have by statute the simplest rights of control and interference; but after all it is in the Company and its servants only that there is an intimate and familiar knowledge of Indian affairs, and an uninterrupted and continual bias of them, they present medium through which it cannot always be possible to see distinctly. In short the Board of Commissioners and the Parliament have even now not so much of the reality as of the right and name of the sovereign powers, and if it were provided that the only Courts to which the Company's servants are now amenable in India were to be subjected to the orders of the Governor-General in Council, I say that the Company and their servants would at once be sovereigns in India in all but the name and the right, and sovereigns uncontrolled by law. It is with reluctance, but surely not without being called upon to do so, that I touch upon matters such as these. It certainly



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is not from any ill-will nor prejudice against the Company, nor those connected with it, to whom I am not insensible that both India and England owe incalculable advantages, and to whom inasmuch as I believe upon a deliberate conviction that the existence of a political body corporate is necessary for the Government of India by England, I hope to see all their lawful powers of Government, vast as they are, continued and confirmed. The inaccurate and confused enactments and ordinances which have been noticed in the preceding part of this statement might be set right with comparative ease, if they were merely verbal, and not connected with faulty arrangements and misunderstandings which lie deeper in the Indian system. There is an utter want of connection between the Supreme Court and the Provincial Courts, and the two sorts of legal process which are employed by them. Lamentable as it is that such a feeling should exist, the exercise of the powers of the one system is viewed with jealousy by those who are connected with the other; every Court in India is liable to be perplexed by the obligation which more or less is imposed upon all, of administering three or four different sorts of law to as many classes of persons. That which is before all other things desirable, and without which the root of these mischiefs never will be reached, is the obtaining a clear and steady view, and the establishing a general understanding of the just rights in relation to India and to each other, of the Parliament, the Crown, the Company, the British people, and the Indian people. It may savour of presumption to lay down the law in matters of such high importance; but on the one hand I am satisfied that no two persons can talk about India without misapprehending each other if they are not previously agreed as to these points; and on the other, I do not believe that there is so much of a positive and fixed difference of opinions respecting them, as there is of an indistinctness and fluctuation which a plain statement may remove sufficiently for my present purpose. The Parliament, I conceive, has the whole right of legislation, excepting so much as it may have delegated, and even in that case it retains the right of revoking, modifying, revising, controlling and superintending. The Crown has the sovereignty, with which many dormant rights are connected, and the power of controlling and directing the executive government, and of making orders for every thing which is not otherwise provided for by the Parliament, or by the laws of the United Kingdom. At present the Crown appoints also the Judges of the only Courts to which British persons are generally amenable. The Company, to whose rights of property my present observations have no reference, are in possession throughout India of the whole executive powers of Government in subordination to the Crown, and upon a somewhat different footing from the rest of the particular powers in Bengal, Behar and Orissa, of collecting and managing the whole revenue, of administering justice amongst the Indian people, and of maintaining an army, and they have strong claims both of justice and expediency to the continuance of these powers in their hands, and those of their numerous officers and servants as long as it can be made to consist with the real interests of the British and Indian people, and with the rights of the Crown and Parliament. The British people are entitled to all the benefit which, by the efforts of the Parliament, the Crown and the Company can be made to result to them from a mercantile and general intercourse with India; it was for this object that the Company was created, it was only upon the ground of their exclusive privileges tending ultimately to this object, or in some other way to the common good of the nation, that the grant of them

them could at first have been maintained to be lawful. The Indian people have not any real interest which is at variance with those I have mentioned; no other calamity could happen to them half so frightful as that the British Government should terminate; and good regulations would make a steady and gradual increase to an indefinite extent of the intercourse between India and England a blessing to both. If, indeed, we were to take up the detestable doctrine, that India is valuable to England solely as it is capable of yielding a surplus revenue to be appropriated by the latter, it would be plain enough that the interests of the two people are at variance; but if the object of the intercourse of the two nations be not to take money out of the pockets of one and put it into the pockets of another, but to interchange all good, whether physical or moral, which may be in the possession of either, and to obtain a wider area and more varied opportunities for the exercise, in right actions and to good purposes, of the faculties and energies of both, then there is but one interest, howsoever it may be obscured and hidden, and the paths to it may be crossed and perplexed by our imperfect intellects and free-will. Of these rights and powers, the particular points to which my observations are directed are those of legislation and the administration of justice. The legislative power belongs of right to the King in Parliament, but in fact is principally exercised by the Company; for the regulations of the Governor-General in Council are at present the effectual legislation of India, and the Parliament, from an unavoidable ignorance of the internal affairs of India, has had very little to do with these laws either before or after they were made. The whole administration of justice was once on the point of falling into the hands of the Company, when an awkward attempt was made to take it for the Crown, which has ended in its being broken in two, and its being left in its present disjointed and inefficient form. To rectify this state of things, the first object seems to be, that each of these departments of government should be placed more distinctly under one head; that something should be conceded to the Company on the one hand, but that on the other the power of legislation should be secured much more firmly and substantially to the Crown and Parliament than it is at present. If the Company should cease to be in India a commercial body, and become entirely a political organ of Government, I should see no objection against leaving to it all the ordinary administration of justice; but adequate securities must in that case be provided against any invasion of the right of making laws, by the exercise in other hands of a right of interpreting them. I could approve of a change by which every Court in India of primary and original jurisdiction might become what is called a Company's Court, if by means of a well constituted Court of Appeal it could be made tolerably certain that the laws should be administered in the spirit in which they were made, and if by the help of a subordinate Legislative Council in India a real and effective revision of all Indian laws and regulations by the King in Parliament could be kept in operation. In other words, to put the ordinary administration of justice in India upon a good and durable footing, it seems to me that all the officers by whom it is to be conducted ought to be appointed immediately by the Crown, or all by the Company, and that the latter is more practicable than the former; but that to secure the right of making laws from being defeated by the mode of putting them in action, there ought to be a Court of general appeal in India, of which it should be the main object to keep the two powers of making and of dispensing law in accordance and

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union with each other, and that to enable the Parliament to be really the Legislature of India, there should be in India a Legislative Council, subordinate and responsible to the Parliament. Of these two great links of the political relations of India with the United Kingdom, the mode of establishing one has been under consideration in the earlier part of this paper. Of the Court of Appeal, I should say that all the Judges ought to be appointed by the Crown, but that a considerable portion of them, perhaps the majority, should be taken from amongst the Company's servants, and that the jurisdiction should be chiefly upon appeal from the Superior Provincial Courts, one of which should be established in Calcutta. Whether there should be an entirely distinct system of Revenue Courts, whether the Court of Appeal should have a general superintendence of the proceedings of the Provincial Courts by some shorter process than formal appeals, and whether it ought not to have an original penal jurisdiction over offences of a high nature, are matters which would require a more minute consideration than I can at present give to them. All the Provincial Courts and Courts of Circuit should have the power of administering law to British as well as to Indian persons, together with a general superintendence over the Zillah and inferior Courts within given districts. For the present it would not perhaps be necessary that the jurisdiction of the Zillah Courts should be altered, but upon this point I am not entitled, by a sufficient knowledge of the provinces, to speak with any confidence. If regular and permanent circuits could not be at once established throughout all India, the existing circuits might be sufficient for a while, or in addition particular circuits might be appointed by the Provincial Courts, from time to time, with sufficient public notice; and the trials of actions commenced in the Provincial Courts might be so appointed in particular parts of the circuits as to prevent as much as possible the expense and trouble of bringing witnesses from a distance. If British persons were to be generally amenable to the Company's Courts, those Courts must be made capable of administering justice according to the principles, at least, if not the exact rules of British law; and for this purpose the Company would have to take into their service, or to educate a sufficient number of English lawyers, to afford the assistance of a Judge of at least one to each of the superior Provincial Courts. At first it would be necessary, as at present, that actions against Mahomedans, Hindus, or British persons, should be determined by Mahomedan, Hindu, or British law, according as the defendant might be of one or other of these classes; but this is really so strange a practice that it must be put an end to soon, and in less than another period of twenty years, a well constituted Legislative Council might make one code of municipal law, applying, with a few peculiar exceptions, to all persons in India. The laws of marriage and of succession to property, including the law of adoption, would perhaps be almost the only permanent and insuperable peculiarities; and by requiring that in adoption, the intention of the adopting party should be expressed in writing, this act might be put pretty much on the footing of other obligations and engagements.

23. The Governor-General in Council has been so good as to give the Judges the opportunity also of expressing their sentiments respecting the free admission of all the subjects of the British Crown into India, with the liberty of purchasing and holding lands. This is a subject on which I feel that my opinions are not entitled to much consideration, and I have never applied myself to it in such a way as to be able to go into the details.

I have

I have always apprehended it to be an inevitable consequence of a free trade, that the British merchants and agents must not only pass to and fro in the interior of the country, but that they must become connected with the cultivation of the soil. This has, in fact, taken place to a considerable extent, and it seems to be now only a question of degree, not whether British persons shall hold lands at all, but to what extent, in what way, and under what regulations they shall hold them. Decided opinions are expressed by his Lordship the Governor-General in Council, and are known to be also entertained by the Secretary in the territorial department, whose great abilities, experience and caution, and especially his intimate knowledge of the revenue system, give to his conclusions peculiar weight and value. These have considerably diminished the apprehensions which I had been taught to feel of the consequences of any great and sudden innovation in this respect; and there was no need of them to satisfy me that "colonization," which, in reference to India, and in the ordinary acceptation of the term, has always seemed to me to be sheer nonsense or something worse, is not what is thought of by the Government. But there is no view which I am able to take of the subject in which it does not appear to be a matter of difficulty, and one which would require many and resolute arrangements to throw all doors open, and to let those come who might choose to come, and those buy who were able to buy, could scarcely fail to produce confusion, there would be a danger at least of many persons coming here without adequate means of providing for themselves, under the mistaken notion, that their own labour or skill would suffice. Destitution in India, is to an European a state of extreme wretchedness, and a wearisome but certain road to premature death. The natives in many parts of India, though not so much in Bengal as elsewhere, would be greatly annoyed by European settlers, especially where the village system prevails. English landholders might be expected to give a great deal of trouble to the revenue department. The rigid system of the land revenue would probably be too strong for them; but what opposition might they not excite against any increase or alteration of the Sayer duties, or the imposition of other taxes, which in the course of time will, in all likelihood, become necessary. An enthusiastic proprietor of a zemindary might make it a focus of missionary zeal, which would disturb a province. New Courts of Justice, and with increased powers, would be wanted. I should think that, if the experiment were to be tried, it had better be confined at first to this Presidency, and either to a large district round Calcutta, or to the immediate vicinities of the superior Provincial Courts, which arrangement need not prevent British persons from occupying indigo, coffee, and cotton factories in other places, in the same way as they now do. When I have been led into conjectures as to the future destinies of India, it has sometimes struck me, that a time might come when there would be an attempt to establish, to a certain extent, a landed aristocracy, by assignments of the land revenue of particular districts in which it has been permanently settled, with such seigniorial or magisterial rights as the Government might be able and willing to annex to the grant. Whenever such assignments could be sold for more than twenty years' purchase of the existing revenue, there would be a present gain to the Government, if the purchase money were to be applied in redeeming debt on which so much as five per cent. interest was payable; and if the assignments were not to be made beyond the extent of the territorial debt, I do not see how any claims of property of the Company

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upon the territorial revenues, whether real or erroneous, could be affected one way or the other. If such assignments were to be made to persons who had been long in the Company's service in India, or to other persons well selected, there would not be much risk in letting other British persons purchase or farm lands under them. For a considerable period it might perhaps be desirable, that these grants should not be inheritable, but that although they should be of the entirety, yet a condition should be annexed for the sale by the executor or administrator within a year after the death of the grantee; certain conditions of residence in India might also be imposed.

24. In consequence of the determination respecting Penang, which is understood to have been made, it seems to have become unnecessary to say anything on the papers which relate to it. I am sorry that I have not been able to compress my observations within narrower limits, but I will not conclude them without offering my sincere thanks to the Governor-General in Council, for the communication which has been made to the Judges with so much candour, and so much in a spirit of confidence, nor without expressing an earnest hope, that it may not be thought any undue advantage has been taken of this liberality, but more especially that in the vindication of the Court, which I have felt myself called upon to make, there is nothing which can tend to interrupt or impair the good-will which has hitherto subsisted between the Judges and the members of the Government, for all of whom I beg leave to assure them, that I entertain a cordial esteem and perfect respect.

Garden Reach, Calcutta,  
2 October 1829.

(Signed) CHARLES EDWARD GREY.

No. 21.

MINUTE by the Hon. Sir J. Franks; dated 23 Sept. 1829.

RIGHT HON. LORD, AND HON. SIRS:

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In reply to your letter of the 14th July last, addressed to the Judges of the Supreme Court of Judicature at Fort William, in which you were pleased to propose to their consideration, that the Members of the Supreme Government and the Members of the Supreme Court of Calcutta should be constituted a Legislative Council, with power to enact laws for the guidance of the several Courts established by the King within the territories of the East-India Company, and for the regulation of the rights and obligations of all powers subject to their authority; and in which you expressed your desire that, should our sentiments concur with those entertained by you as to the expediency and necessity of enlarging the legislative powers of Government, we should state the conclusions to which a consideration of the subject might lead us in regard to the mode in which such powers could best be exercised, and the limitations to which the exercise of them could best be subjected. I have the honour to submit to you the sentiments an attentive consideration of the subject of your letter has induced me to form.

Three questions arise upon that proposal:

1st. Whether the Members of the Supreme Government and of the Supreme Court should

should be constituted a Legislative Council, for the purposes mentioned in your letter.

2d. As to the mode such powers could best be exercised.

3d. As to the limitations to which the exercise of those powers could be best subjected.

And to enable me the better to explain the grounds of the opinion I have formed upon these questions, I,

1st. Shall recur briefly to the powers given by the Governor-General of this Presidency in Council;

2d. To the sources whence those powers are derived;

3d. State over whom, and with reference to what constitutions and codes of laws those powers are exercised, and the consequent difficulty in the station of Governor-General in Council, from the imperfect constitution of the Council.

1st. The powers of the Governor-General and Council, are those of a government to make laws, rules and regulations, political and civil, within the Company's territories in India (subject to such restriction as is provided by the statute 13 Geo. III. c. 63, s. 36); and as time and occasion may require, to modify and administer those laws, rules and regulations for the public good.

2d. They derive those powers partly incident to the high offices they hold by appointment of the Honourable the East-India Company, whose powers are derived to them from grants and charters of the Crown, and enactments of the Legislature of Great Britain, that confirm and enlarge the powers of the Company.

1669.—I refer first to the grant of the island of Bombay to the East-India Company in the year 1669, (before that time incorporated), to them and their successors. By that grant the General Court of Proprietors, or the Governor and Committee of said Company, are empowered to make laws and constitutions for the government of said island and its inhabitants; and to impose fines and punishments not extending to take away life or member, so that the punishment should not be repugnant, but as near as may be agreeable to the law of England; and a proviso was made thereby, that the East-India Company should enjoy the several powers granted thereby in all other ports, islands, territories and places they should acquire within the limits of their Charter.

I do not advert to Charters granted to the United Company between the time of the grant of that Charter of 1669, and the year 1773, because by the statute 13 Geo. III. c. 68, and 53 Geo. III. c. 155, s. 1, the whole Civil and Military Government of the Presidency of Fort William, and of all the territorial acquisitions and revenues in the kingdom of Bengal, Behar and Orissa, were thereby vested in and continued to the United Company, during such time as the territorial acquisitions should be vested in them.

A particular provision had been made by the statute 13 Geo. III. c. 63, s. 36, already referred to, whereby the Governor-General and Council may make such rules, ordinances and regulations as shall appear just for the government of the Company's settlement at Fort William, and the factories subordinate thereto, such rules, &c. not to be repugnant to the laws of England, nor to be valid until registered and published in the Supreme Court.

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The powers thereby given are recognized and continued by the stat. 53 Geo. III. c. 155, s. 98, by which power was given to the Governments of this and other Presidencies of India, respectively to impose duties of customs and other taxes upon all persons resident or being therein, upon all property therein; and also upon such other persons and property as are mentioned in and subject, as in that section.

The 99th section gives power to the Governor-General in Council to impose fines for enforcing payment of such customs or taxes.

These are the sources from whence the powers of the Governor-General in Council of the Presidency are derived. It is not necessary to refer to those of the other Presidencies.

3d. The Governor-General in Council exercises these powers over British subjects, the native subjects of India, Mahomedans and Hindoos, and other persons born or resident in India, of whatever other religious sect or persuasion.

It is not necessary to observe here upon the restricted interpretation given to the words "British subjects." But it appears to me that a legitimate distribution of the people of the Company's territory will be found by classing them thus: natural-born subjects of the king, subjects of the king, and aliens.

British subjects are to be governed according to the laws of England, and so far as applicable to or modified for the benefit of that portion of his Majesty's subjects in India, Mahomedans and Hindoos, according to their respective laws and institutions, and all others not Mahomedans or Hindoos, according to the law of their domicile: to that law each owes at least a temporary allegiance, and from it is entitled to protection.

It is a rule of law that statutes enacted upon the same subject ought to be construed together and taken as one code, and thus the spirit with which one law within a code has been enacted, may become a direction by which to interpret different parts of the whole.

From hence it may appear that the difficulties of the Governor-General and Council, from the various other duties of his and their stations, as well as those imposed by such causes, are great. They have to perform with those that require the care of an empire, the application of principles of natural justice to the purposes of municipal laws, to perform at the same time the duties of legislators and lawyers, and to do so amongst a people differing from each other in language, religion and laws.

The case mentioned in your letter, as referred by the Supreme Court to His Majesty in Council, is one that shows inconvenience has been felt from an imperfect state of the law, and the want of sufficient power within this Presidency to reform and amend it as exigency may require.

A case had occurred some time before that, in which a person who had received a wound within the district and jurisdiction of the Supreme Court of Calcutta, afterwards and within a year after he had received that wound, died at the general hospital without the jurisdiction. That case was brought before the Supreme Court, and was referred to his Majesty in Council, for this reason, by the common law of England, a Grand Jury is sworn to inquire only for the body of the county, and if a man had been wounded in one county and died in another, it was doubted whether the offender was indictable in either Court at common law, because no complete act of felony was committed in either of them. By stat. 2 and 3 Edward VI., the Justices or Coroners of the county where the party died shall proceed as if the stroke had been in the county where the party died.

Your

Your Lordship and the Members of Council would not have doubted that the terms in which that statute were expressed, and the less so, with reference to the time of its enactment, were such as to prevent its being applicable to this district by any construction; and that as a case that required an extension of the law in like matters to this district, it was proper to refer it to his gracious Majesty in Council.

To such inconveniences may be added those that had arisen and may occur because of the state of the law as to registration of such rules, ordinances and regulations as come within the provisions of the statute 18 Geo. III. c. 63, s. 36, or are referable to it. Rules, ordinances and regulations made by the Governor-General in Council, by authority of that section, "for the good order and civil government of the United Company's settlement at Fort William, and other factories thereto subordinate or to be subordinate," may after registration be laws to bind the population of countries so extensive, at least as to British subjects, yet there are not any words, save the words "Factories," to confine the authority of such laws to them. But what may be the construction given to those words or that section? It admits the making rules, ordinances and regulations that require the assent of the Governor-General in Council, and registration by the Supreme Court before they become law, although under circumstances that preclude the Judges from knowing the reasons of their enactment, or the Governor-General in Council from knowing, before registration or rejection of them, the reasons or causes of registration or rejection of them by the Supreme Court.

Thus a rule, ordinance or regulation, well conceived for its general objects, may be rejected, because of some particular clause repugnant to the law of England, the merits of the rule, ordinance or regulation unknown to the Judges of the Supreme Court, and the cause of rejection not known to the Governor-General in Council until the moment registration was refused.

It is difficult, if possible, for Government to anticipate, by theoretic views, what laws may be wanted for good order amongst a people; those the results of experience are likely to be best, yet they are to be proved by trial, and either to keep pace with the changes of time or to be left absolute. Thus amendments become necessary, yet are unavailing because of the distance of the Legislature of Great Britain from you, so that wants are imperfectly communicated, and cannot receive perfect redress.

Whereas, if the rules, ordinances and regulations necessary for government should be proposed and discussed previous to the promulgation of them in the presence of the Government and the Judges, the motives, reasons and ends of rules, ordinances and regulations could be considered by them all before obtruded into law, and ends beneficial to justice might be accomplished, with a concurrence in duty desirable to all, by means not repugnant to the laws of England.

My Lord and Gentlemen, I have considered your proposal with reference to the classes of society, and comparative numbers amongst whom we are placed, without anticipating what a progressive state of society may suggest to your consideration at a future time, and after a most attentive consideration of that proposal, have the honour to express to you that I am convinced good effects would follow from the adoption of it.

2d. The second question arising upon your letter is, in regard to the mode such power could be best exerted; and it appears to me those powers could be best exercised by  
constituting

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constituting the Judges of the Supreme Court Members of the Council of this Presidency, together with the Governor-General and Members of Council, to be with powers equal to them for the purposes only of making laws, ordinances, rules and regulations for the government of the people of all classes within this Presidency, in matters civil and criminal, provided such powers should not be construed so as to render null any law of England or Great Britain now in force in this Presidency.

3d. As to the limitations to which the exercise of those powers could be best subjected.

That no rule, ordinance or regulation should be made for the purpose of altering, amending or repealing any law or regulation for any such purpose, until notice had been previously given by order of the Governor-General, or the order of the principal acting Member of Council of such meeting, to hear, deliberate and decide upon the rule, &c. to be there proposed; and that the like means for promulgation and registration of all laws, rules, ordinances and regulations now requisite by the statute 13 Geo. III. c. 63, in certain, should be adopted in all cases.

In considering the limitation it would be necessary to contrast it with the extent of the power to be given, and for this purpose it might be thought advisable to repeal the 7th section of the statute 13 Geo. III. c. 63, and 53 Geo. III. s. 1, 98 and 99, so far as relates to the powers to make laws, rules, ordinances or regulations, and provide by an enactment, that powers should be given to the Governor-General and Council, to be constituted as fully as had before been given by these sections or any preceding law, and so fully as to render their powers further sufficient to the purposes and objects intended.

The Judges of the Supreme Court may be placed in a situation of great responsibility, by taking part in making such laws, rules, ordinances or regulations as may be made; and I take the liberty to suggest, if they should be appointed Members of the Council, it should be lawful for them, or those of them who should attend any Council at which any law, rule or regulation of the Governor-General in Council should be made, in which the majority of the Judges who had thereto attended have not concurred, to present their protest to the Governor-General in Council, in such protest stating their objections, and the reasons upon which they were founded, to such rule, law, &c., and that every such protest should be forwarded to his Majesty in Council, and to the Honourable East-India Company, together with the rule or regulation to which it referred.

Objection made to.

It may be objected to the adoption of your proposal, that it would effect an union of the legislative and judicial powers, such as writers upon the theories of laws would prevent. But with the utmost deference to their opinions, the union proposed is not such as they contemplated. That proposed is not an union of the entire legislative with the entire judicial; that proposed would give participation in the legislative to the judicial, without giving judicial to the legislative; a voice to the judicial, not a will to the legislative.

The objection would not be applicable in any criminal case, because in such cases jurors are triers of facts.

Cases, within the jurisdiction of the Supreme Court at the civil side are tried by the Judges without the intervention of a jury. It may be thought (as to me appears) advisable to consider whether the trial on certain cases might not be by jury; as in cases of libel, and breach of contract of marriage or seduction; and that there should be a discretionary power to the Judges in other cases to order juries, triers, to be summoned. The objection,



objection, even if it ought to avail at all at the civil side, would then be law of force; but when it is recollected that every adjudication at the civil side, when the same exceeds 1,000 pagodas, may be reviewed by an appellate tribunal, it will appear the judicial power in this Presidency is different from what those writers had in contemplation.

My Lord and Gentlemen, I have conclude, in reply to your letter of the 14th July last, most respectfully requesting that I may be excused by you for the length to which my letter has gone, as it proceeded from a desire to lay before you the grounds of the sentiments I have submitted to you.

Several documents have been handed to me by the Chief Justice of the Supreme Court, since I received and while writing my reply to your letter. I shall now proceed to advert to them.

The first of these documents is a Minute, dated the 15th April 1829, signed by the Hon. Sir Charles Metcalfe, Bart.; but as it contains, in a more condensed manner, objections contained in the other documents, I shall confine the observations I am about to have the honour of submitting to your Lordship and the Honourable Members of Council, to the statements and order in that Minute. It suggests, for the reasons stated in the Minute, that it is necessary to determine whether in matters of doubtful dispute the Government or the Court of Judicature ought to be supreme. I would not venture to contend for, or maintain the affirmation of the proposition in either branch of it. It is for the Legislature of the United Kingdom of Great Britain and Ireland, in its wisdom, to consider whether the laws and institutions of England have not prescribed to the magistracy their respective duties in the relations of society, and whether an observance of those duties must not prevent collision between them, by means not repugnant to the constitution.

Answer to Minute 2,  
&c.

2d. That the extent of jurisdiction of his Majesty's Court of Judicature should be accurately defined.

Extent of Jurisdiction.

By extent of jurisdiction of a Court, I mean such power as it may lawfully exercise over certain classes of people, within certain limits, by settled process of law.

The statutes intended to define the jurisdiction of the Supreme Court within this Presidency are, the 13 Geo. III. c. 63, s. 14; the Charter of 1774 (in effect a statute), ss. 2, 4, 13, 14, 15, 19, 22, 23, 26, 27, qualified as to the 13th s. of the Charter by the provisions of the statute 31 Geo. III. c. 76, s. 17. It is not so important to inquire whether doubt has existed, as whether it does exist in the construction of these statutes. If there does, surely it is better to define, declare and promulge the jurisdiction of the Supreme Court. It has jurisdiction, as a Court, civil, criminal, ecclesiastical and admiralty, in distinct capacities.

I shall refer to the institutions of its jurisdiction in this order, civil, criminal, and ecclesiastical; each owes its origin to the statute 13 Geo. III. c. 63. It was enacted long after incorporation of the East-India-Company, and after it acquired extensive territories in India, and after it had added to the number of his Majesty's subjects who had come into India from his Majesty's dominions in Europe, the population of native subjects contained in those territories. It may therefore be supposed, that when the Legislature declared its intention, by the statute of 1773, the 13 Geo. III. to constitute a Supreme Court at Calcutta, as in the words of that statute, "to have full power and authority to

Order of the Jurisdiction of the Supreme Court.

exercise



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exercise and perform all civil, criminal, and ecclesiastical jurisdiction," it had in contemplation, at least for purposes of prevention and punishment of crimes, other classes of his Majesty's subjects within the territories then belonging to his Majesty acquired to his dominions, besides his Majesty's subjects purely British. My reasons for supposing it had, are, that taking these sections, the 13th and 14th of the 63 Geo. III., and 13th and 19th of the Charter together, they give civil jurisdiction, according to the English law, over British subjects, within the town of Calcutta, factory of Fort William, limits thereof, and factories thereto subordinate, in Bengal, Behar and Orissa, and criminal jurisdiction within the same limits, over those and all other subjects of his Majesty.

The statute 21 Geo. III. c. 70, is more precise as to the limits of the jurisdiction of the Supreme Court; it provides that the Supreme Court of this Presidency shall have power to hear and determine suits against all the inhabitants of Calcutta, saying to natives, as by that section, the right to have justice administered to them according to their own laws. But I do not find, in that or any other section of the statute or charter, any limit to the jurisdiction given to the Supreme Court of this Presidency, as to the offences committed by any of his Majesty's subjects in the factories of Fort William, or factories subordinate thereto.

Cause of the doubt as to Supreme Courts' jurisdiction.

The doubt left by these sections appears to have been because limits had not been fixed, or directed to be fixed to factories. It is merely a matter of mensuration in one sense, in another a matter of policy, that ought now to be determined, not by deciding what might have been intended, but what was most likely to conduce to the public welfare.

Although the law has described the limits as to place, and the classes of persons who are to be subject to the jurisdiction of the Supreme Court of this Presidency, by construction of words that admit, to certain limits, the issue of its process; no process of the Supreme Court of this Presidency can issue unless signed by one of its Judges; process of the Supreme Court issues grounded upon an affidavit that the defendant is liable to the jurisdiction of the Court, by what means, and of the cause of suit.

Inhabitants.

By construction given to the word "inhabitant," not only residents in Calcutta, but also persons, natives, who have houses called family houses, or houses of business, wherein gomustahs, clerks or servants reside, have been and are held to be liable to its jurisdiction and process.

Legal use of that word.

The word inhabitants was used in the 17th section of that statute in a clause that gave jurisdiction in such matters to the Supreme Court, and it became the duty of the Court to construe and apply that word, as it had been construed and applied in England.

A person who having such a house and servants residing in it, although not a resident in it himself, must be supposed to have persons there whose duty it is to receive writings and orders left there for him, and processes of law served there, as well as any other writings or orders.

2d Lord Coke's Institute, 697.

The construction of the word "inhabitants," has arisen in England at various times, and in many instances; I shall mention one. By the statute 22 Hen. VIII. c. 5, for Repair of Bridges, it is enacted, "That if the bridges shall be without the city or town corporate, the repair shall be made by the inhabitants of the shire or riding within which the said bridges decayed shall happen to be."

Ibid. 702.

Lord Coke's comment upon this statute, p. 702 of the same book, is, "the persons to be

" be charged by this statute are comprehended under this only word [inhabitants], which  
 " word is needful to be explained, being the largest word of this kind; for although a  
 " man be dwelling in a house in a foreign county, riding, city or town corporate, yet if he  
 " hath lands or tenements in his possession or manurance in the county, riding, city or  
 " town corporate, he is an inhabitant, both where his person dwelleth, and where he hath  
 " lands or tenements in his own possession, within this statute."

In the case of the Attorney-General v. Forster, 10 Ves. Rep. 389, comments upon various interpretations are given to the word "inhabitants." The Supreme Court appears to have construed it according to law, and the exigencies of time and place.

It is now (as I conceive) understood by persons in that Court, the process of the Supreme Court may issue against British subjects and natives, actual inhabitants of Calcutta, by the statute 21 Geo. III. c. 70, s. 17, subject to the provisions of the Charter, s. 13, and also against natives not actual inhabitants, if constructively liable to the jurisdiction of the Court for such causes as mentioned.

The consequences found to follow from such constructive interpretation of the word "inhabitants," seem to me beneficial to the public, for the reasons I shall take liberty to offer.

First, because persons who have such family houses, or houses of business, although they reside in remote parts of India, obtain and gain credit, and become debtors and creditors in Calcutta, because of such constructive inhabitancy.

Second, because creditors who live in remote places may recover debts from persons who are inhabitants of Calcutta. Credit gives facility to trade, and in the relation of creditor and debtor, rights ought to be merely reciprocal as good policy admits.

Third, because of the contingencies, length of time and expenses that intervene, may cause one who should be obliged to sue another in a remote part of India, because of a debt that other had contracted with him in Calcutta. The evidence of his contract must be supposed to be where it was made; and the expenses of bringing witnesses to a distant place a large deduction from his demand.

Fourth, because the instances that most frequently occur in which such constructive interpretation has been given in the Supreme Court to the word "inhabitants," are those in which joint families, persons joint in trade, or the contract sued upon are the defendants, having family houses or of business, as banker or shroff, for such business; and in case of joint contracts of any kind, made in or to be performed in Calcutta, if actual inhabitants of Calcutta, shall be those only liable to be sued there; the plaintiff, with whom the contract was made, if not paid, must proceed by as many suits as there are separate jurisdictions of his joint debtors; leaving as to the defendants' rights to contribution each from the other, to pay the plaintiff, undetermined.

3d par. of the Minute. I do not believe it was the intention of the Legislature that the Indian subjects of his Majesty should be amenable to two sets of Courts and two codes of laws; nor do I think there is such double effect as stated in this paragraph. The Legislature appears to have given concurrent jurisdiction within Bengal, Behar and Orissa, to the Supreme Court, over certain subjects of suit, as by the 13th section of the Charter, and the 21 Geo. III. c. 70, s. 17, as mentioned in these sections. The system of law is more perfect in England; yet there the subject is amenable to several jurisdictions at

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Lord Eldon, of that  
word.

Construction given to  
that word beneficial.

Because, &c.

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law, to that of the Courts of King's Bench, Common Pleas and Exchequer; in equity, to those of the Court of Chancery and Exchequer ~~at its equity side~~; yet no inconvenience has been found or complained of there for such cause; nor can the subject in England, or within the jurisdiction of the Supreme Court here be liable, in the same suit, to different Courts or tribunals; because, according to principles of natural justice applied to our municipal codes of law and equity, the pendency of a suit in a Court of competent jurisdiction would be cause to abate it, if made subject of suit in another.

4. I know not of the occurrences alluded to in this paragraph, save as traditions of past times.

Case of a native servant of the King of Oude.

5. The native alluded to in this paragraph was arrested under process of the Supreme Court, issued grounded upon an affidavit made by a Mr. William Morton, of a debt, because of liability, supposed from constructive inhabitancy.

By the Charter of 1774, s. 15, if a person, or any person acting for him, shall swear that his debtor is indebted to him 100 rupees current, and is subject to the jurisdiction of the Supreme Court, he thereby becomes entitled to obtain a writ of *capias* to cause the person so indebted to be arrested and held to bail, for that or whatever larger sum should be sworn to be due. The 26th Rule of the Court is, that every such affidavit shall not only aver that the defendant is subject to the jurisdiction, but in what manner, as by inhabitancy or other sufficient cause. In the case alluded to, the affidavit stated the defendant was liable to the jurisdiction as an inhabitant of Calcutta. Similar writs are issued forth of the Courts of Law at Westminster by the officers of the Courts, but not for so small sums. The Court here (Supreme Court) does not allow a writ of *capias* to issue, save upon affidavit that 400 rupees are due; the Court of Requests has jurisdiction to that amount.

The proceeding being to compel a defendant to appear, is from its nature *ex parte*. When a defendant has appeared, he may plead he is not subject to the jurisdiction of the Court, and the issue thereon is first tried; or he may waive the former plea, and plead he is not in debt to the plaintiff; or plead both. And although the defendant should not plead to the jurisdiction, yet the plaintiff should prove his allegation that the plaintiff is liable to the jurisdiction. So that the Court cannot know how any of these facts are before the trial of them. In the case of the native lately a servant of the King of Oude, he took issue upon both averments; and that of jurisdiction, first tried, was found for him. The decision of the Court, therefore, in effect was, that they had not jurisdiction to try the case of that nature.

He having so far succeeded, obtained an information (a proceeding for an offence charged) against the plaintiff, Mr. Morton, who had caused that arrest, and others his alleged associates for a conspiracy, to charge him, the native, with a debt, or have him thereupon arrested. In such a proceeding, malice is an integral part of the offence. But if the prosecutor in the information was in fact indebted to the plaintiff in the action at the time of the arrest of the defendant in the action, the charge of malice was answered. Thus the question, whether debt due or not, incidentally arose. There was evidence to show the defendant was indebted at the time of the arrest to Mr. Morton, the plaintiff. He since then died. But until the question shall be tried (if it ever should) in a direct issue between those who represent him, and that native, it cannot be known the allegation of the debt was false.

6. The charge is general, I know not to what it alluded; no bond can authorize seizure of property as therein stated, unless judgment had previously been obtained upon it, and execution thereon issued, without statement of the facts, however a presumption ought to exist if there was a bond, and judgment upon it, either that a suit upon the bond was not defended or that judgment was had by consent, or possibly upon a verdict after trial of the merits.

Upon paragraph 7, I request permission to refer to the reply of Sir Charles Grey, Chief Justice of the Supreme Court, to the Minute upon which I at present have the honour to observe, for a statement of the case referred to in that Minute. My reasons are, he was the Judge who presided in the ordinary course of business during the sessions for criminal business at which that case was tried.

The course of business at the sessions for such purpose is, that all the Judges sit during the charge to the Grand Jury, of the Judge who presides.

The other Judges retire after the preceding Judge has charged the Grand Jury, and unless upon a trial upon a indictment for the crime of murder, or some case that may require the attendance of all the Judges, they do not meet again upon the affairs of that sessions until they have been concluded.

Whereupon all the Judges meet in chamber; to hear the reports of the Judge who had presided, and decide upon the sentence that ought to be pronounced upon each person who had been convicted before him during the preceding sessions.

At the close of those sessions, the Chief Justice read his notes of that case to his brethren, and suggested to them to consider whether it would not be right humbly to submit the facts of it to the consideration of his Majesty in Council.

The suggestion of the Chief Justice was approved by his brethren. It appeared to them, that as doubts were spread as to the jurisdiction of the Court, and as grounds to sustain such doubts were to be found in the Charter, it was better to refer the case, with the respect due to that high tribunal, to the Court of Appeal from the decision of the Supreme Court, that by the authority of the adjudication of a Court of ultimate resort, the law should be so declared as to prevent doubt upon such case in future.

The case alluded to was thereupon signed by all the Judges, for the purpose of being humbly submitted to the adjudication of his Majesty in Council; and I most respectfully expressed my hope, that after the facts of that case shall have been referred to, they may appear sufficient to show, the Judges who so acted were under the impression of a proper caution in the administration of justice, and not acting under the influence of a desire to extend the jurisdiction of the Supreme Court of this Presidency. I do not know to what the statement in the eighth paragraph alludes. A Court of Equity, in the exercise of its jurisdiction, acts *in personam*, and, because of its jurisdiction over the person of a party to a suit, may have jurisdiction over property without the jurisdiction. The jurisdiction over persons may be (as has been shown); because of constructive residence. The statement in this paragraph, as to European Receivers, alludes to matter not brought to the notice of the Court; I know not of them; of the Receivers as appointed by the Court I shall make some observations in progress.

The orders of Court are void as to persons not parties to suit, or served with its order.

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I concur in the statement in the Minute, that a clear definition of the extent of the Court's jurisdiction, with respect to native subjects resident beyond Calcutta, is required. The sum of my reasons is, that when the statute 13 Geo. III. was enacted, the British subjects of his Majesty "were but a few of them, and they strangers in the land."

They are described in terms that cannot be misapplied, when the words British subjects are used, in statute 13 Geo. III. c. 63, s. 14; but in that section the words "subjects of his Majesty" are used; so in the 13th section of the Charter of 1774.

The 19th section of the Charter appears to me to have been intended to make all persons within the limits of Calcutta, factory of Fort William, and subordinate to it, amenable to the jurisdiction of the Court, as to offences.

These sections are referable to the times in which they were enacted, and account for doubts that may exist as to classes of persons over whom the jurisdiction of the Court should extend; but if the limits of the factories of Fort William, and thereto subordinate, should be marked out, and the construction put by the Court upon the word "inhabitants" acquiesced in, or it should be defined, I apprehend any questions that cause disquiet upon these topics would be set at rest.

I had already had the honour of submitting to you what occurred to me upon the interpretation of that word, and the consequence that might follow from taking from the Supreme Court its jurisdiction over "inhabitants" in a constructive sense, such as has been explained.

The latter part of the 8th, and whole of the 9th, relate to Madras; the 10th, 11th and 12th paragraphs to Bombay.

Declaration that the  
Judges do not desire  
to extend their juris-  
diction.

I beg leave to observe upon part of the 12th paragraph; it applies to a supposed desire of the Court to extend its jurisdiction. I assure the honourable Baronet I have not been, nor do I believe my brethren have, or are desirous to extend its jurisdiction. The duties of their office place them in a situation that sometimes make their refusals of applications seem a denial of justice, and at other times subject their compliance, under circumstances that require it, to the censure of an encroachment of jurisdiction; each case ought to be judged of by its facts and circumstances, and the Judges of the Court by what is apparent and probable. Their occupations are many and continued, in an exhausting climate; and, conscious of their responsibility, they are more anxious to perform their duties than to extend their jurisdiction.

To the considerations suggested 1st, 2d, paragraph 12, I have already submitted such observations as occurred to me.

The observations that follow in paragraph 12, lead to a statement of the classes of persons subject to the jurisdiction:

1. British subjects; 2, 3, 4 (front).

It appears to me an accurate classification.

Inhabitant, to define,  
not necessary.

But I take the liberty to say, it appears to me rather advisable than necessary to give a distinct definition to the term "inhabitant." The law of England, and the interpretation given to that word by the Supreme Court of Calcutta, leave it now without doubt. It has been applied by adjudication to persons who reside out of Calcutta, however distant, if within the Company's territories, and that the cause of their being held so liable is their having

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having houses and servants in their pay residing in them, within Calcutta. It thus becomes a question of expediency, whether the law is to remain as received by the Court, or altered as to constructive jurisdiction upon which it has acted.

The Minute states that the law ought to be declared as to acts committed within the territories of Native Princes.

The suggestion probably arises from the statute 33 Geo. III. c. 62, s. 66; I have not heard of the case alluded to.

That statute must have been enacted for the vindication of Native Princes, and it may be approved, that their magistracy should concur in giving operation to it. Thus, provided that no arrest of a British subject, charged with an offence committed in the territory of a Native Prince, should be lawful, unless the warrant for his arrest, lawfully issued forth of the Supreme Court, had been endorsed by a magistrate of competent authority within the territory of such Prince, to authorise an arrest for such an offence.

The Minute states, that process of the Supreme Court ought to be executed by the local magistrates, and by the officers of the Supreme Court.

The process alluded to I take to be that of sequestration, or effected by appointment of a Receiver. The effect of appointing either is the same as to the lands of the party. Such officers (for by appointment they become so far officers of the Court) are authorized by the orders that appoint them to receive the rents or other property liable by the process of the party against whom it issues.

The object of such process is to compel a party who has disobeyed the process, decree, or order of the Court, to be obedient to it, or in cases of doubtful right appearing upon the answer of a defendant to a suit, to have the rents or other subject of the suit, where of nature to admit it, paid into the Accountant-General's hands, and placed in bank to credit of the pending cause, in *usumque habuitis*.

Before appointment of such officer, the Court refers it to the Master to appoint a proper person, who gives security to perform the duties of it. In the Supreme Court an officer of the Court is, upon consent of parties, appointed Receiver; but the party upon whose application a Receiver is appointed may nominate who he pleases, subject to such approbation.

After the rents or property have been placed to the credit of the cause by such means, it becomes competent to parties in the cause, or persons who have prior right to the property seized, or subject to the Receiver, to apply to have their rights referred to the Master to be ascertained, and themselves paid. An order is thereupon made, that the Receiver shall account, and the report of the Master bringing before the Court the state of the funds, and right of the applicant, an order is accordingly made. If there should not be funds so applicable, the party who had applied is left, as before, not affected as to his right or remedy, by any order the Court had made.

It is necessary the person who should receive money to be so applicable, should be daily liable to the orders of the Court, and to answer for a contempt of Court, in case of disobedience to any of them.

Should officers or local magistrates of the Mofussil be appointed sequestrators or receivers, they would become thereby, *ipso facto*, officers of the Supreme Court in the

causes

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Arrests in territories  
of Native Princes.

Receivers.

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Registration of Decrees in the Mofussil.

As to principal jurisdiction, subjects partly European, part Asiatic, to be subject to British law; British subjects, as to civil, to the local;

Subject, however, &amp;c.

Supreme, to be a Court of Appeal.

Benefit to be expected.

causes in which they should be appointed, and subject to imprisonment for disobedience to its orders. If local magistrates or officers, not officers of the Court, were to act as sequestrators or receivers, it would not have jurisdiction over them.

The Chief Justice of the Court (lately) advised that decrees or orders, whereby lands in the Mofussil were to be made subject to receivers, should be registered in the Native Court of the district where the lands lay. The object was to give notice of the decree, and prevent surprise. To register the decree would give notice of its object. As to lands in the Mofussil, it could not be registered without consent of the Government, nor could the mere registration of it affect any prior right.

I entirely concur in the recommendation of the Minute, that it would be better to place the class of subjects partly European, partly Asiatic, on the footing of British subjects as to the criminal jurisdiction: it would be received by them most probably as a privilege.

I concur in the opinion expressed in the Minute, that as to contracts beyond the local jurisdiction of his Majesty's Courts in these provinces, British subjects ought to be subject to the local jurisdiction; and as to acts or contracts done or made, or lands situate within the jurisdiction (limits of, I mean) of the Supreme Court, British subjects ought to be subject to the jurisdiction of that Court. I however beg leave to suggest, that the removal of the party into either jurisdiction ought to make him subject, as to debts and contracts, to the authority of its Courts, because credit is personal, and liability to debt or contract follows the person to whom it was confided.

I have for some time thought, and have the honour also of expressing concurrence in the opinion expressed in the Minute, that the Supreme Court, constituted a Court of Appeal from the decrees of the higher Local Courts, might, under modifications, be productive of public benefit. Upon this subject, so important, it may be thought advisable to consult the retired Judges, who now in England have much information and experience as to the constitution of the Supreme and Local Courts in India.

The benefit to the public I should expect from such a constitution of the Supreme Court, would be, that still preserving to his Majesty's British subjects in India the right and administration of English law, a Court so constituted for such purposes would promote inquiries in judicial proceedings according to English law of evidence, and attain greater uniformity of decision; subsidiary alterations, as supposed by the Minute, might be expected to follow.

Rules of evidence, in every state, are modes of inquiry into truth, and tend to that end most directly by the testimony of credible witnesses, and relevant documents.

The rules of evidence of the laws of England are not voluminous, considering the various jurisdictions and classes of subjects to which they relate, its tenures, commerce, revenue, contracts, offences committed within its territories, and some even without them, its Justices of Peace, and summary, as well as plenary authorities. The rules of evidence would be considered concise, if referred to each head to which they might be applied. The rules of evidence of Mahomedan and Hindoo law are far behind where either law prevails, sometimes giving credit to the greater number of witnesses, and sometimes rejecting them because of kindred.

The laws of succession to lands in different countries owe each their origin to some particular cause, feudal or commercial. In India the laws of succession seem to have been



been produced from suggestions of nature to provide for offspring, widow, and kindred, and they prescribe rules for partition amongst them.

The laws of contract of most countries have resemblance to each other, to have been the result of like necessity, and progression of causes.

Service and hire, buying and selling, loan and pledge, mortgage, &c., relations of contracting parties, that each suggest a necessity of duty, are common to the laws of England, Mahomedans, and Hindoos.

I apprehend the rule as to liability to jurisdiction of an executor or administrator is, as supposed, to be the correct rule by the Minute; that persons in such relation ought to be subject to the jurisdiction, because of such debts or contracts of the deceased, as they may as his representatives be held liable to perform such as plainly and necessarily arising out of, are incidental to the inquiries to which such debts and contracts give rise, and none other.

(Signed) JOHN FRANKS.

LEGISLATIVE  
COUNCILS,  
&c.

Sir J. Franks'  
Minute.

No. 22.

MINUTE, by the Honourable Sir E. Ryan, dated 2 October 1829.

RIGHT HON. LORD AND HON. SIRS:

In reply to your letter of the 14th July 1829, I have the honour to communicate the opinion which I have formed on the expediency and necessity of enlarging the legislative powers of Government, of the mode in which I conceive such powers can be best exercised, and the limitation to which the exercise of them should be subjected.

I have not, however, felt it necessary to confine the expression of my opinions to the nature and construction of the proposed Legislative Council; the papers which were under the consideration of Government, and which accompanied their letter, have induced me to enter into other matters connected with the administration of justice in India, and to explain some instances in which the Court is supposed to have exceeded its jurisdiction, and as to which, it appears to me, much mistake and misapprehension has existed in the minds of some of the Members of Government.

I have found it most convenient to arrange what I have to offer on these subjects under the following heads:

I. The inconveniences and evils attendant upon the present imperfectly defined jurisdiction of the King's Courts in India.

II. The alterations in the judicial system of India which a free admission of Europeans would render necessary.

III. The expediency and necessity of enlarging the legislative powers of Government.

I.

Upon many of the questions relating to the jurisdiction of the King's Courts in India it would not have occurred to me to make any observations, had they not been presented to my notice by the papers which accompanied the letter, and particularly by the Minute of Sir Charles Metcalfe. I feel, however, that it is desirable that the Judges should give the fullest explanation in their power of the views they take of what has appeared so objectionable in the supposed assumption of jurisdiction.

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1172 FIFTH APPENDIX TO THE THIRD REPORT OF THE

1. A recent appointment by the Supreme Court of a Receiver to collect the rent of land in the Mofussil, which had been apportioned under a decree of partition, appears to have led to the consideration of the general question, whether the Supreme Court has jurisdiction over immoveable property in the interior of the country in all cases in which the possessor or owner is personally subject to its jurisdiction.

Many supposed cases of evil likely to arise from the exercise of such a power have been stated, and there appears to be a general opinion entertained by the Members of Government, that neither the Charters nor Acts of Parliament confer on this Court the power which it has assumed over land in the provinces.

That there is little or no reason to apprehend that any great practical evil has as yet arisen, may be safely inferred from no instance of the kind having been mentioned, although the Court has exercised this jurisdiction from its first establishment. The Minutes of Mr. W. H. Macnaghten and Mr. Hogg have satisfactorily shown that neither the revenues of the state or the occupiers of the land are in any way prejudiced, and that the fears which are entertained are chiefly founded on mistaken notions of the control which the Court exercises over the Collectors and occupiers of land. But without stopping to consider evils that have not arisen, and which, if likely to occur, might easily be avoided, with the assistance which I am sure this Court would receive from the Local Government, I proceed to the more general question, whether the Court has exceeded its jurisdiction.

The 13th section of the Charter of 1774 gives the Supreme Court power and jurisdiction to determine all actions and suits of what nature or kind soever, &c., or any "rights, titles, claims or demands of, in or to any houses, lands or other things, real or personal, in the several provinces or districts of *Bengal, Behar and Orissa*, or touching the possession or any interest or lien in or upon the same, and all pleas, real, personal or mixt." It then goes on to specify the persons against whom such suits or actions may be maintained. The 14th section empowers the Court to give judgment between the parties to such suits. The 15th section authorizes the Court to issue writs of execution to the Sheriff, commanding him to "seize and deliver the possession of houses, lands or other things recovered in and by such judgment, or to levy any sum of money which shall be so recovered, by seizing and selling so much of the houses, lands, debts or other effects, real and personal, of the party against whom such writ shall be awarded, as will be sufficient to answer and satisfy the said judgment, or to take and imprison the body of such party or parties until he or they shall make satisfaction, or do both, as the case requires."

From the express words of the Charter, from the constant usage of the Court, from a similar construction having been put on the Charters at Bombay and Madras by the Judges of those places, from the absurdity which would follow in giving the creditor the right to imprison his debtor, but not to take his property, I cannot entertain a doubt that this Court has, and that it would be an anomaly if it had not, jurisdiction over immoveable property in the provinces, in all cases in which the person interested in such property is personally subject to its jurisdiction. I must confess it is with some surprise that I find such strong statements of the Court's interference with landed property in the provinces being an encroachment not contemplated by the Legislature or the Charter, after the  
Government

Government has so long been in the possession of the views of those on whose opinions they would naturally rely in matters of this nature. The Advocate-General at this Presidency in 1805, Mr. Robert Smith, says, "It is perfectly clear that property throughout these provinces is liable to the process of the Supreme Court, wherever the proprietor is subject to its jurisdiction." "It is equally clear," (he adds) "upon the most acknowledged principles, that in cases of dispute whether the proprietor be or be not subject to its jurisdiction, or whether property attached by its process be or be not subject to its jurisdiction, or be or be not the property of a given person, these questions of fact must necessarily be tried before the Supreme Court itself; that the only way of contesting them directly, and procuring them to be countermanded or annulled, is by an application to that authority; and that a forcible resistance ought to be prevented as a breach of the peace." In 1818, Mr. Macklin, Advocate-General at Bombay, and Mr. Spankie, filling the like office at this Presidency, gave opinions to the same effect.

Doubts having arisen at Madras as to the exercise of this power;

The Court of Directors in 1823 took the opinion of their Standing Counsel, Mr. Serjeant Bosanquet, who says, "there can, I apprehend, be no doubt that the jurisdiction of the Supreme Court does extend to the attachment and sale of property belonging to persons subject to its jurisdiction, wherever situated."

2. Another instance in which the Court is supposed to have exceeded its jurisdiction is in the extended construction it has put on the word "*Inhabitant*." As a practical instance of the evils arising from such an extended meaning of this word, the case of *Morton v. Mehdy Ally Khan* is alluded to in the Minute of Sir Charles Metcalfe; this cause was tried since I have had the honour of a seat in the Supreme Court.

The jurisdiction was successfully contested by the defendant, and he was decided not to be an inhabitant of Calcutta, because it was not *satisfactorily* shown to the Court that he occupied, by his servants or gomastahs, a house in Calcutta, in which his servants or gomastahs carried on business on his account. There was conflicting testimony as to these facts; some evidence was given of the existence of the debt which the plaintiff claimed; but that question was not entered into fully, it being unnecessary to proceed farther after the Court had decided the defendant not to be subject to its jurisdiction. The defendant did reside at a considerable distance from Calcutta; but it has not, to my knowledge, ever been shown that the debt, on which an attempt was made to arrest the defendant, was not legally due. I am free to admit "that this Court has powers which were not expected at first to have so wide a range; and when, in rare instances, they are called into action at vast distances, that they may be at once ineffectual and inconvenient;" but this objection the Court has not the power to remedy. It may seem "an outrage to common sense to call one a constructive inhabitant of Calcutta who has never been within many hundred miles of the place;" but it certainly is no new doctrine invented by the Judges of the Courts of India for the purpose of extending their jurisdiction: for in my Lord Coke's time it was decided, that a man living in Cornwall may, to many purposes, be an inhabitant of London; and that learned person held, that for the purpose of contributing to county rates, under the statute of Bridge, occupiers of lands, though wholly residing in a foreign country, are assessable as inhabitants.

The most distinguished lawyers of modern times have sanctioned these opinions. Lord

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Eldon says, "this word is capable of a larger or more limited interpretation; the construction is always to be made with reference to the nature of the subject." "That inhabitancy might refer to residence, or it might be wholly independent of it." "The word inhabitant (says Lord Tenterden, the present Chief Justice of the King's Bench), like many other words in our own and other languages, varies in its import, according to the subject to which it is applied."

Sir Charles Metcalfe thinks, "that persons residing elsewhere, who formerly have resided within the local limits, must be amenable for acts committed during their residence within the limits, but ought not to be so for acts committed within the jurisdiction of the Provincial Courts, or elsewhere beyond the local limits of the Royal Court's jurisdiction." The charters of the Mayor's Court of 1726 and 1753, expressly provided that persons resident at the time the cause of action accrued, as well as those who are resident when it is commenced, should be subject to the Court's jurisdiction. Natives who have traded in Calcutta, and have afterwards absconded, have been held subject to the Court's jurisdiction for contracts entered into during their residence. This would be conformable to Sir Charles Metcalfe's views, and also to the express provisions of the charters of the Mayor's Court; and yet this equally deserves the name of *legal locus pocus*, or *legal legerdemain*, with other cases of constructive inhabitancy; for the party is no longer *resident* within the assigned limits, and cannot therefore, in the common meaning of the term, be called an inhabitant. But this, which Mr. Serjeant Bosanquet states, in the opinion to which I have before alluded, "to be a very reasonable ground of jurisdiction," I admit is very different from the case of a person like Mehdy Ally Khan, who had never been in Calcutta in his life. I will not enter upon a legal argument to show that the Court is borne out by authority and principle in the interpretation that it has given to this word, when it includes in its meaning persons who may never have been within the local limits of Calcutta. "Actions (as Mr. Serjeant Spankie observes, in an opinion given to Government) against shroffs at Benares, Patna, &c., who have koties in Calcutta, managed by the gomastah, though the principals never were in Calcutta in their lives, occur daily, and such circumstances have ever been considered a settled ground of jurisdiction as inhabitancy." But leaving the question of technical law, which appears to be so unintelligible, would it be equitable or just, as Mr. W. H. Magnaghten observes, "to allow a man to enter into all kinds of commercial engagements, and to exempt his property from the liability to which he has subjected it, simply because he does not happen to be in the same spot where the contract may have been entered into?" Must the creditor leave the spot where the evidence of the contract is, and follow the person of his debtor from zillah to zillah; or if his property (as with native bankers is constantly the case) is situated in different districts, subject to different Courts, must the creditor employ vakeels or agents to sue in each, and be subject to all the vexation and annoyance of a multiplicity of suits, instead of one; and if he happens to be a British subject not allowed by the law, as it at present exists, to stir without license farther than ten miles from the Presidency, may he not be wholly unable to select agents in whom he can confide in such Courts? It is to be feared the best that can be selected not unfrequently listen to the proposals of the opposite party, and neglect the interests of their client. I am sure that no restriction would be imposed on the British subject

subject seeking his debtor in the provinces; but when the Judges were called upon to construe the charters and statutes which give the Court jurisdiction, the intention of the whole must be taken, and such inconveniences and evils could not be overlooked. "It may be said (Sir Edward East observes), that the creditors have a remedy in the Provincial Courts; but such is the state of business in those Courts, the uncertainty of the system of law, and the delay and vexation of a protracted attendance, that many persons prefer to abandon their just demands rather than pursue them there; an evil that must naturally increase with the increasing population of the Indo-British dominions, and is much aggravated by the accumulated arrears of those Courts." I feel confident the only safe construction of the term "*inhabitants*" is that which the Court, in the instance complained of, has adopted, and that any other would have led to much fraud and injustice.

3. Another instance of extended encroachment, on the part of the Court, mentioned by Sir Charles Metcalfe, is the case of Khoda Bhukah and others. I forbear entering into this question here, because the Judges have put the Government in possession of their views of this case, and of the important questions which arise out of it; from which I am sure Sir Charles Metcalfe will perceive that he was somewhat premature and unguarded in casting imputations upon the Judges of so grave a character, founded, as it would now appear, upon information altogether erroneous.

3. It is thought objectionable that natives (not otherwise subject to the jurisdiction of the Supreme Courts), who apply for probates of wills and letters of administration in order to authenticate their title to property, have in consequence of such acts been held liable to the Court's jurisdiction. A case of this kind, which occurred at Madras some time since, is mentioned by Sir Charles Metcalfe.

It is not my intention to enter into the facts of that case; but as the Court here, to a limited extent, has assumed a similar jurisdiction, it is necessary to state the view I take of this question. This Court has for some time held, that all natives obtaining probates of wills or letters of administration, though not inhabitants of Calcutta, or otherwise subject to the Court's jurisdiction, make themselves by such acts liable to all suits and actions relating to the property of the deceased testator or intestate: that they are generally amenable to the Court's jurisdiction, has, I believe, never yet been held in this Presidency.

A practice has certainly prevailed for some time of granting letters of administration or probates of wills to natives; but the ecclesiastical jurisdiction of the Supreme Court, and the right to grant probates or letters of administration, is in terms expressly confined to "*British subjects*." It is probable that this practice has become prevalent, owing to the refusal of Government to pay money without the representatives of deceased Hindoos or Mussulmen can thus authenticate their title. "In a late instance," says Sir Edward East, "where the Government had reasonably refused to pay money to one who claimed to be the representative of a deceased Hindoo entitled to it, without assurance of his representative character, I could devise no better method, in justice to both parties, than to admit him, at his own request, to deposit the will as in registry with the registrar of the Supreme Court, on the ecclesiastical side, and to administer a voluntary oath, at the Hindoo executor's request, verifying the will and his own representative character. But

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by way of precaution, and that no person might be induced by it to attribute a greater authority than belonged to such an act, I directed the registrar to draw up the verification in writing, which was to be given to the party by way of memorial of his claim, as having been made *voluntarily*, and noting that the will was *not registered*, but voluntarily deposited as a registry."

The Court having no power to grant probates or letters of administration to deceased Hindoos or Mussulmen, although the party applying may be a native inhabitant of Calcutta, and it having been uniformly held that no such authority is necessary to establish the title of parties who sue in the Supreme Court as the representatives of such persons, I am unable, although I speak with the greatest respect and deference to my learned brethren, who are of a different opinion, to see how an extra-judicial proceeding on the part of the Court totally unwarranted and unauthorized, can make persons subject to its jurisdiction, although such proceeding may be at the request of the party who is thereby held to render himself amenable.

This view of the law was formerly taken by the Supreme Court at Madras in 1815. The Court *then* held that the taking out of probate of a will by a native, not an inhabitant of Madras, did not make him subject to its jurisdiction, even with reference to matters relating to the will; and the Judges also thought it wrong to grant probate where it could not punish a party guilty of perjury in obtaining it, nor call him to account for a mal or mistaken administration of his trust. According to the opinion I have formed of this exercise of jurisdiction, I am bound to say that the Court has exceeded its powers, and that the observations of Sir Charles Metcalfe are in this case well founded.

5. It is not my intention to enter into any explanation of the objections which are contained in the Minute of Sir Charles Metcalfe to certain proceedings of the Courts at Madras and Bombay. I feel that it would be more respectful to the learned persons who preside over those Courts that I should abstain from reviewing their proceeding, with which indeed I am not sufficiently acquainted to speak with accuracy.

From similar motives I abstain from making any observation on the papers relating to the Recorder's Court at Penang, particularly as it seems not improbable that the proceedings of that Court may become the subject of inquiry in England.

6. As a remedy for evils which may arise from the Supreme Courts in India assuming a jurisdiction which the Government may think they do not possess, it is proposed by Sir Charles Metcalfe that there should be vested in the Government the power of calling upon the Court to explain the grounds of its proceeding; and if, notwithstanding any explanation they may receive, they remain convinced of the illegality of the supposed extension of the Court's powers, they should have a right to appeal, and in a case which *they may judge* to be of sufficient importance, the power of arresting the progress of the encroachment pending the result of the appeal.

For the first part of the suggestion, namely, that the Court should explain the grounds of its proceeding, there can be no reason for any legislative enactment; it is the practice of all Judges in English Courts of Justice to explain the reasons on which their decision is founded. In the Supreme Court of this Presidency it is the custom of the Judges, where the parties have the power and are desirous of appealing, to deliver, if requested, their

their judgments in writing, in order that they may be transmitted to the higher tribunal if the parties think fit. That the Government should have the right to appeal, in any instance in which they thought the Court had exceeded its jurisdiction, would be a course to which the Judges could in no way object; on the contrary, it would be a satisfaction and relief to them to have all doubtful points settled by the highest tribunal; but in civil proceedings the suitors might have interests with which the course proposed to be adopted might interfere; and as regards them this power would require to be exercised with some limitations and restrictions. The only part of the proposal which I think objectionable is, that the Government should have a discretionary power of suspending the functions of the Court whenever they may deem it expedient. To invest the authorities here with such a power would be contrary to all principles of English Government as exercised in the other colonial possessions of the Crown, and possessed only by the most despotic governments in the world.

The necessity of the separation of the judicial and executive power is the commonplace of all text writers on the English law and constitution, and I confess I can see nothing in the constitution and powers of the King's Courts in India, or in the circumstances of the country in which we are placed, which could authorize so dangerous an infringement of all first principles of British Government. That the jurisdiction of the King's Courts should be accurately defined, and that its powers should be restricted and limited in such way as the Legislature shall think most beneficial for the interests of all concerned, is most desirable; but the law having been fixed, it cannot be left in uncertainty as to who are to be the persons to interpret it: some set of persons must be assigned for that purpose. If the Judges appointed by the Crown are to be the interpreters, their judgment must be final, until reversed by some tribunal empowered to review their decision. By the Charters of the Mayor's Courts of 1726 and 1753, the suitors of the Court in civil proceedings had the power of appealing to the Governor and Council, whose decision was final, if the subject matter in dispute did not exceed 1,000 pagodas; but in case it exceeded that sum, the parties had a right to appeal from their decision to the King in Council.

An attempt to introduce a similar provision was made by Mr. Sullivan in 1772, but his bill was thrown out, and the Act of Parliament passed which authorized the Crown to grant the present Charter, making the appeal direct to the King in Council. It is obvious therefore, that the Legislature at that time did not think it fitting that the decisions of the Supreme Court should be reviewed by the local Government, even in a legally constituted Court of Appeal, though Courts of this description, of which the Governor and Council are members, exist in most of the other colonies. If the Parliament should vest in persons here the power of making laws for all classes of his Majesty's subjects, then indeed there would be a ready and constitutional means of avoiding all difficulties that could arise from any interpretation being given to the laws which was thought injurious to the interests of the State; and even without such a power, I do not mean to say that some great question of state necessity or expediency may not make it incumbent on the Government to interpose its authority, and to prevent the law taking its course; but these emergencies are of rare occurrence, and are of course only to be justified by the particular circumstances of the case, as are like infringements of the law in England, for which,

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which, where the necessity is apparent, Parliament indemnifies the Government against the consequences of their act.

7. Although I have attempted to explain some mistakes and misapprehensions which I conceive to exist, as to the jurisdiction which the Court exercises, I am free to admit that, on several important points, our jurisdiction is involved in doubts, which have given rise to questions of a very embarrassing nature.

Our letter of the 18th of May, addressed to the Secretary of the Board of Commissioners for the Affairs of India, a copy of which was transmitted to the Governor-General in Council, will have explained, at some length, many of the difficulties which have occurred to the Judges on the interpretation they are called upon to give to the Charter and Statutes, as regards the jurisdiction which we possess as a Court of Oyer and Terminer.

The civil jurisdiction is not more accurately defined; and, as instance of the difficulties in which we are placed, I could only refer to words of constant occurrence in all the Charters and Acts of Parliament relating to this country, namely, "*British subjects*," which are supposed to have a distinct and definite meaning, well understood by all who have been concerned in the administration of justice in the Supreme Courts of India. That the meaning is not so clearly ascertained, but is involved in great obscurity and perplexity, I need only refer to the statements in the letter to which I before alluded; and, in further illustration, I would ask, are the King's subjects born in his other colonial possessions to be included within the term "*British subject*," so as to be liable to the Court's civil jurisdiction?

That the term "*British subjects*" is strictly applicable to this class of persons, there can be no doubt. *Nemo potest exuere patriam* is a maxim of our law. The doctrine of allegiance is founded on a mutual compact between the Crown and the subject, and it cannot be dissolved by either without the concurrence of the other. Are this class of persons, when resident in the provinces, to be subject to the jurisdiction of the Court, because they are born in other territorial possessions of the Crown; and are native Christians to be excluded? "In what condition," says Sir Edward East, "are native Christians, if they be not British subjects? They are native born, and cannot be debarred from colonizing in their native and only country. What is the law of inheritance, or succession, or marriage, out of the precincts of Calcutta? Can the Hindoo or Mahomedan law be administered to them as Christians? Under what law are the illegitimate children of British fathers to be governed? What are the laws applicable to Portuguese, Armenian, and other native Christians in the Provinces?" "That Christian Judges (Sir Charles Metcalfe observes) should try Hindoo prisoners according to Mahomedan law, seems sufficiently absurd; but that Christian Judges of British blood should try Christians of British extraction by Mahomedan law, seems, if possible, still more strange."

It is true that the law and legislative Government of every dominion equally affects all persons and all property within its limits. Whoever purchases, lives or sues there, puts himself under the law of the place; this rule is generally simple and plain in its application. The laws of a conquered country remain in full force until they are altered by the conqueror; but the King has the power to alter the old laws and introduce new. What is the condition of the provinces in this respect? That the British law has been introduced

introduced throughout all the territories of the Crown as regards British subjects is clear; but natives, from a peculiar signification which these words possess in this country alone, are held not to be within the meaning of that term. "Although" (as Sir Edward East observes) "in strictness of law all the native inhabitants within the Company's territories are subjects of his Majesty, and therefore, in an enlarged sense, might be considered to be 'British subjects,' in like manner as a native of Ireland even before the Parliamentary Union was as much a British subject as a native of Great Britain; that is, they are native subjects of the British King and Crown, though under different administrations of Government, holding authority under the same Prince; and this, which could never have been seriously questioned after the supremacy of the King of Delhi became purely nominal, is now put beyond all doubt by the formal declaration of the Legislature, in the Act of the 53d Geo. III. c. 155, which asserts the undoubted sovereignty of the Crown over the Indian territories."

Do the old laws of the country, the Mahomedan and Hindoo codes, remain (modified and altered in some respects by the conquerors) applicable to all classes of persons, whether Christians or infidels; and every species of property within the limits of the King's dominions, except that particular class of subjects distinguished by the word "British?" or are those laws applicable only to that class of the King's subjects who are infidels, and are all Christian subjects of the King, not included in the term British, as well as foreigners and others residing in the provinces, to be governed by the law of England?

The difficulty arises from two systems of law being in force within the same dominions, and within the same parts of those dominions; otherwise the application of the general rule would be sufficiently simple.

If the old laws of the country remained unaltered, and the King had not introduced new laws, all persons within these dominions would be subject to the same system of laws, except where they were against the laws of God; and in cases where they were rejected on that account, or were altogether silent, the conquered country would be governed according to the rules of natural equity.

But the laws are altered, and a new system partially introduced; and the difficulty is to say, under which set of laws Christians, not being British subjects, according to the technical meaning of that word, are to be governed.

Upon questions of this nature, involved in the greatest obscurity, does the jurisdiction of the Court not unfrequently depend.

Other inconveniences are sufficiently obvious. The great extension of the British territories since the Charter of 1774, has given to the Court a range of jurisdiction which, at places remote from Calcutta, can only be considered a mockery of justice, if it be not the means of fraud and oppression. There can be no doubt, therefore, that difficulties and inconveniences are constantly arising from the undefined and uncertain state of the Court's jurisdiction, which are alike perplexing and harassing to the suitors, the Judges, and all who are concerned in the administration of justice.

## II.

The alterations in the judicial system of India which a free admission of Europeans would render necessary.



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If the views of the Governor-General and the Members of Council should be adopted by the authorities in England, and if it should be thought essential to the best interests of England and of India, that an increased facility should be given to Europeans to settle in the interior, and to acquire landed property, I entirely concur in the opinion expressed by Government, that "serious inconveniences must be experienced, unless the persons allowed to settle are made subject, with the rest of the inhabitants, to the authority of the local Courts." It cannot be presumed, in a country where the population is so dense, and the wages of labour so low, that if Europeans of all descriptions should be permitted freely to resort here, they will be able, under a tropical sun, to compete with the native labourer: all such experiments must fail. "A labouring class, who should attempt to settle, must perish." It is the free introduction of European capital and skill which the Government appear to think so desirable for cultivating the resources of India, and it does not seem probable that the settlers will for some time be numerous. So far indeed" (Minute of Governor-General) "from fearing too great an influx of Europeans, I confess my apprehension is, that no encouragement we can hold out will induce them to resort to India in the number that seems to be desirable."

But although the numbers who may resort here may not be great, the capital that may be invested in commercial and agricultural speculations may be large, and scattered over a vast extent of territory. To leave the European owner or occupier of lands, or the manufacturer, at great distances from Calcutta, amenable only to the jurisdiction of the Supreme Court, or subject only to the Mofussil Courts, with the limited powers which they at present possess, would lead to such a system of fraud and injustice, and leave the natives so entirely at the mercy of the settlers, that I think it would be an insuperable obstacle to the allowing of Europeans to settle in the interior. I am therefore satisfied that all persons in the interior of the country must be subject to the Courts of the district which they inhabit; but the more difficult question remains, as to what is to be the nature and constitution of the Court to which they are to be subject, and the laws by which they are to be governed? I cannot help thinking the introduction of colonization will render necessary a total change in the whole judicial system of India, both as regards the King's and Company's Courts, and the laws which are administered in them.

It would be presumptuous in me to offer to the notice of Government any views of my own upon so wide and difficult a subject, and upon which there appears to be such a contrariety of opinion, even amongst those who, from long experience and an intimate knowledge of the interior of the country, and the manners and habits of the natives, seem best fitted to suggest the course which such a new state of things would render necessary. Many are the questions to which the proposed change must necessarily give rise.

Would it be desirable, as the Governor-General suggests, "that the Supreme Court, instead of standing, as now, isolated from the Government and from the local tribunals, should be rendered a component part of our judicial establishment, the whole being remodelled into one harmonious system?" If the Provincial Courts are to determine all civil and criminal suits between all the inhabitants of the particular district for which the Court is instituted, it would seem desirable that there should be one Supreme Court (something analogous to the King's Bench in England), superintending and controlling all

all the tribunals of the country. Sir Charles Metcalfe suggests, that in such a case the Sudder Dewanny and Nizamut Adawlut might be abolished, and his Majesty's Supreme Court, at each Presidency, made the highest Court in civil and criminal jurisdiction for all the territories subject to such Presidency. Other suggestions are made by Sir Charles Metcalfe as to the jurisdiction this Court should possess, the persons from whom the Judges should be selected, and the laws by which the different classes of persons subject to it should be governed. Although I refrain from offering suggestions of my own, I may be permitted to express my general assent to the views of Sir Charles Metcalfe, whose great experience and knowledge of all that relates to the government of India give so much weight and importance to any opinion he may have formed.

Would it be desirable to consolidate the English, Hindoo and Mahomedan laws now in force in India, and form one general code, by which all classes of persons in India should be governed? In the letter of Government it is said that the criminal law, as administered by the Nizamut Adawlut and the subordinate Courts in the interior of the country, retains but little of the Mahomedan code, whether in respect to the laws of evidence or as to the punishment annexed to offences. After the application of Mahomedan law to a Hindoo population, and the changes to which this law has been subjected by the regulations of Government, it can hardly be contended that any jealousy on the part of the natives to our further interference, is to be apprehended. There are too many instances in which the customs and prejudices of the Hindoos have been superseded and abrogated by the regulations of Government, to leave any doubt that any alteration in the criminal law would be quietly submitted to. Would it be difficult, therefore, to introduce a code of criminal law applicable to all persons; and might not the same course be adopted as to their civil rights, securing to the natives their own peculiar law and usages?

"The only objection that strikes me (Sir Charles Metcalfe's Minute of the 19th of February 1829) to the spread of a British Christian population in India, is the existing discordance of the laws by which our English and our native subjects are respectively governed; this objection will no doubt in time be removed, and the sooner the better, by forming laws equally binding on both parties in all concerns common to both, and leaving to all their suitable laws in whatever peculiarly concerns themselves alone."

Are British subjects, when amenable to the Provincial Courts, to retain the right of trial by jury in criminal cases?

Mr. Holt Mackenzie states, that it would not be very difficult to constitute a jury of four or five persons in each of the principal towns (Meerut, Delhi, Agra, Farruckabad, Bareilly, Allahabad, Benares, Patna, Moorshedabad, Dacca, Chittagong); and Mr. Bayley seems to think, that a jury of Christians of this number might be assembled at those places, though not always Englishmen. It is of course obvious, that if the necessity for juries in the interior arises from the increase of British settlers, that the supply will in a great measure accompany the demand; and, according to Mr. Hogg's statement, there would not now be any difficulty in assembling a full jury of Christians at any of the principal towns mentioned by Mr. Holt Mackenzie. But supposing British subjects to retain their right of trial by jury in all criminal cases, and a code of criminal laws be framed applicable to all classes of persons; is the form of trial of the Hindoo or Maho-

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median to differ in this respect from the christian subjects of the king? I am aware that this is a subject that has of late undergone much discussion, and upon which there is a great contrariety of opinion. The experiment has certainly been successfully tried at Ceylon, as also has the formation of a code of laws; but whether or not the circumstances of the two countries are so totally unlike as to form no ground for its adoption here, I will not take upon myself to say. This question must necessarily press itself upon the attention of those who may have to re-model the courts of this country upon a free admission of Europeans. On every consideration, it would seem desirable to place *all* classes of his Majesty's subjects in his Indian territories as far as possible under the same laws, amenable to the same tribunals, and to the same forms of trial.

I have alluded only to a few of the questions that must arise, but many hardly less important seem to remain. Is it desirable to introduce the English language into the judicial proceedings of the Provincial Courts, and gradually to abolish the Persian? Ought the principal Judges of those Courts to be selected from regularly educated lawyers? Are European settlers and British subjects to be amenable to Courts of which natives are the Judges? Would it be desirable to employ European settlers, as well as the Company's servants, as Magistrates and Judges; and might it not be a condition of their settlement that they should gratuitously fill those offices, if required by the Government? Is it desirable to diminish the different stages of appeal through which a cause may now be carried? Would it be desirable to have one Supreme Court in India, to which there might be an ultimate appeal, and that the appeal now allowed to the King in Council should no longer exist? Upon all these points and other alterations which would be consequent upon them, various opinions have been expressed, and the best informed and most intelligent writers have been at variance with each other. I advert to them without expressing any opinion of my own, because I am satisfied that they must all be duly considered if there is to be "a change by which the judicature of India, instead of being divided into separate and independent jurisdictions, is to be amalgamated into one."

Of the expediency and necessity of enlarging the legislative powers of Government:

1. Fully admitting the "defectiveness of the existing law, as applicable to the state of things for which it was meant to provide," and conceiving that it may be necessary to deliberate on the means of correcting past omissions, I still think the providing for the exigencies of the future by far the most important consideration.

It can hardly be presumed that the strong representations of this Government will not have their due weight with the authorities at home, and that "the existence of restrictions which impede the prosperity (Sir Charles Metcalfe's Minute of the 18th of February 1829) of our Indian empire," will not be removed if such a change takes place, and it is thought necessary to remodel the whole judicial system of India. By what authority is this principally to be effected? There are but two distinct authorities to whom any alteration or review of the judicial system could be submitted; either the British Parliament, or a local legislative body to whom the Parliament may have delegated its authority.\*

It would certainly be overlooking all past experience to hope that the many and intricate questions that will arise if the proposed changes are carried into effect, can be

be provided against by any parliamentary enactments. Parliament would be constantly called upon to remedy defects arising from legislating at such a distance, for a people whose habits and manners are so imperfectly understood, while "the delay which must attend a reference to England for the purpose of removing such doubts, or of reconciling the obligations of the law to the exigencies of the State, might be attended with the most afflicting consequences." The utter impossibility of making laws in England for the millions who inhabit the King's territories in India, must have induced the Parliament to recognize and sanction the vast legislative powers which the Government of this Presidency had assumed without its express authority.

Subject only to the limitations and restriction of the 21st of Geo. III. c. 70, s. 23, and the 37th of Geo. III. c. 112, s. 7, the Company's Government have the power of legislating for all the population of this Presidency, except the inhabitants of Calcutta and the British inhabitants of the provinces. The 13th of Geo. III. c. 63, gave the Government and the Supreme Court a restricted and limited power of legislating for the inhabitants of Calcutta; and as to British inhabitants of the provinces, the legislative powers of Government are restricted to the imposing of taxes with the assent of the Court of Directors and the Board of Commissioners, under the provisions of the 53d of Geo. III. c. 155. The 36th clause of the 13th of Geo. III. c. 63, provides, "that it shall be lawful for the Governor-General and Council at Fort William, from time to time to make such rules, ordinances and regulations, for the good order and civil government of the settlement and other places, &c. subordinate thereto, as shall be deemed just and reasonable (such rules, &c. not being repugnant to the laws of the realm), and set, impose, inflict and levy reasonable fines and forfeitures for the breach or non-observance of such rules, &c.; but the same, or any of them, shall not be valid unless duly registered and published in the Supreme Court, with the consent and approbation of the said Court." And then it specifies the mode and time of registry, and gives an appeal to the King in Council, making, however, the law valid in the mean time after its registry.

"By the statute 39 and 40 Geo. III. a further power was given to enforce such rules, &c. by corporeal punishment, that is, by public or private whipping or otherwise; and the statute 53 Geo. III. c. 155, s. 66, requires copies of those rules, &c. to be laid before Parliament."

The Judges of the King's Courts in India have varied in their construction of these clauses, and in their notions of the power which they confer on the local Government and the Court. The ingenious arguments of the counsel on the appeal of Mr. Buckingham against the Press Regulation, show the difficulty of giving any precise interpretation to the words, "contrary to the laws of this realm." Upon the best consideration I can give to the words of this statute, I am prepared to adopt the construction which Sir Edward East has given to them: "But looking first to the terms, rules, ordinances and regulations, used in the granting part, which rather convey the notion of a power to carry into effect, by local and subordinate means and measures, the substance and spirit of laws already given, than to originate new laws; shackled also, as the power is, by the express prohibition that those local rules, &c. shall not be contrary to the laws of the realm; a restriction very difficult to adapt to local circumstances, and almost irreconcilable with any plain departure from the general spirit of those laws, however

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proper in different circumstances ; and most of all, looking at the power given to sanction the observance of such local rules, &c. by *finer, forfeitures and corporeal punishments* : the only construction which could safely be put upon this local legislating power was, that it was to be confined to mere *police regulations* for preserving the peace, preventing and punishing nuisances, and the like, and was not to be extended to a general power of making original laws affecting the liberty or title to property of the inhabitants of Calcutta, including all descriptions, or even the laws, usages and customs of the native inhabitants, though a new law should be given by the local Government to affect the inhabitants of the provinces in the same respects."

If this be the right construction, the legislative powers vested in the several Governments as to the inhabitants of Calcutta, Madras and Bombay, appear to fall short in several respects of what the exigency of the case demands. Sir Edward East, conceiving this statute had not conferred on the Government and Court any sufficient power, proposed "to extend the power of legislation at present conferred upon the Governor-General in Council, with the consent of the Supreme Court, by enabling them to make general local laws (such as in fact the Governor-General and Council alone have been accustomed to make in the Mofussil), not merely confined to purposes of police, but extending to general objects, which would include laws affecting the native inhabitants." If this proposal had been adopted, the defective state of the law as regards the inhabitants of Calcutta might have been remedied; but British inhabitants of the provinces would not have been affected by it. It is with reference to the inhabitants of Calcutta and British subjects in the provinces, that the necessity and expediency of enlarging the legislative powers of Government seems to arise, particularly with reference to those who may be allowed to hold land in the interior, and who, as a necessary consequence of such a measure, would not be removable at the pleasure of Government. Nor are the difficulties that have arisen as to the laws by which native Christians and foreigners of all descriptions are to be governed to be forgotten. If it had been proposed for the first time to give to the Government in this country the power of making laws for such extensive territories, it might have seemed very doubtful whether such a proposition would have been entertained by the British Parliament; but when it is remembered that an almost unrestricted power of legislation has existed here for many years over the great mass of the people, and that a few thousands out of many millions have alone been exempted from this power, or subjected to it only in a limited sense, it seems not very presumptuous to suppose that there can be no very substantial reason why these heretofore excepted classes of persons should not also be made amenable to the local Legislature of the country. I am disposed, therefore, to think that it is expedient to have in this country an authority legally competent to legislate for all classes and for all places.

2. The constitution of this Legislative Council is a question of some difficulty. It is proposed in the letter of Government, that "the Members of the Supreme Government, and the Judges of the Supreme Court of Calcutta, should be constituted a Legislative Council, with power to enact laws for the guidance of all Courts, whether established by the King or by the local Government, within the territories of the East-India Company, and for the regulation of the rights and obligations of all persons subject to their authority." It is also proposed that such laws should be registered in the Supreme Court, with the same

same right of appeal to the King in Council as now exists against regulations made under the 13th Geo. III. The Judges in Court having administrative functions only; and any argument against such laws to be heard, if at all, before the Supreme Council.

The necessity of the separation of the judicial from the executive and legislative powers in a State, is a well-known maxim, and in England is one of the main preservatives of the public liberty. If there existed in this country other elements for a Legislature than the union of the Judges of the King's Court with the Government, I should say, even here it would be most desirable not to depart from a principle of very general application, and founded upon the wisest and most enlarged views of political expediency and the constitution of human society. I admit that it is probable the Judges would be of some assistance to the Government in pointing out the legal effect and bearing of the various laws they might deem it expedient to pass; but it might be a more doubtful question, whether either their knowledge or their previous habits of life would render them equally competent to express their opinions upon the expediency of the measures proposed. The question, too, of expediency must not unfrequently be mixed up with political considerations of great weight and moment; and though it is not proposed that the Judges, and certainly it is most desirable that they should not, have any voice or opinion on matters purely political, it will still, in many cases, be very difficult to separate and distinguish the functions they are to perform.

It is true, that on regulations to be registered under the 13th of Geo. III., the Judges of the Supreme Court are now called upon to decide upon their expediency as well as their legality; such is the construction which the late Sir Edward West, the present Chief Justice of this Court, and other Judges, with whom I entirely concur, have put on this clause; and certainly the task at present imposed upon us is much more difficult, where the regulation is presented for registry without our having any previous knowledge of the reasons and grounds on which the Government have thought fit to propose it, than it could be if we were constitutionally enabled to know their views and objects. "Many laws (says Sir Edward West) are evidently expedient upon the face of them, and, from the known principles and propensities of human nature, require no specific proof that they are so; others may not appear to be expedient upon the face of them, or from the known principles or propensities of human nature, but may be shown to be so by the evidence of particular facts and circumstances." It is impossible to separate the question of legality from that of expediency, or the Judges might be consulted by a Legislative Council, of which they were not constituent members, as the Judges in England are by the House of Lords, whenever they require their opinion on points of law. I am, however, induced to think that, from the mixed nature of the Government of this country, it is not likely, nor do I think it desirable, that the Company's Government should alone possess the power of legislating for all classes of the King's subjects in India.

It would seem that as to those places where the King has introduced the English law, and as to that class of persons who are denominated *British* subjects, no power of legislating is intended to be conferred on the Company's Government, except under the control of the Judges, who are appointed by the Crown, are unmixed with the Com-  
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pany's civil servants, and in the selection of whom the Company has no voice. I think it improbable that the Crown, should the Government still remain with the Company, will relinquish this important check; and as there are no other persons in this country who are exclusively the servants of the Crown, I do not see how, in the present state of things, it is possible to form a Legislative Council, with the powers which it is proposed to vest in it, without making the Judges a constituent part.

Under all these difficulties, I am disposed to concur in the sentiments expressed by Government, "that in the present circumstances of this country there are no elements for a Legislature, excepting the Government and his Majesty's Court;" though I by no means think such an arrangement free from many and weighty objections.

3. I must confess I do not feel so much difficulty in considering the restrictions or limitations to which this body should be subject, as I do the persons of whom it should be composed. After the Government has been permitted for so many years to legislate for the mass of the people, reserving to the King in Council the power of disallowing or amending, within a limited time, the laws they frame, and directing them to be formed into a code, and translated into the languages of the country, I cannot see any objection to vesting powers of a similar nature in the new Legislative Council which it is proposed to institute, and which is to frame laws for all classes of his Majesty's subjects. I agree with Sir Edward East in thinking "the necessary exceptions to such an enlarged power would be, that no laws should be made contrary to the duty of allegiance, nor contrary to any express law made or to be made by Parliament, for the Government of British India; and that the laws should be equal in all matters of common concern between native and British subjects, for the common good, without favour or disparagement to either." I conceive the Crown ought to retain the right of disallowing or amending, within a certain time, all laws which may be framed; a power which it now possesses as to regulations made for the Provincial Courts, under the 23d section of the 21 Geo. III. c. 70; and as to regulations registered in the Supreme Court, of *disallowing* only, under the 37th section of the 13 Geo. III. c. 63. The laws, I conceive, should take effect as soon as passed by the local Legislature, subject to being afterwards disallowed or amended. Copies of these laws should be annually laid before both Houses of Parliament; a course which the statute of the 53 Geo. III. c. 155, s. 16, has directed as to all the regulations at present made by the several Governments in India. I should, in addition to this, think it most desirable that all proposed laws should be openly published for a certain fixed time before they could be passed, in order that all persons, supposing themselves aggrieved, should have an opportunity of stating, at least by petition or memorial, if not by argument, their objections, before the law was carried into effect. It has been the uniform practice of the Supreme Court to hear the inhabitants of Calcutta by means of their advocates, against the registry of regulations made by the Governor-General in Council.

By the construction which I am disposed to put on the 36th section of the 13th Geo. III. c. 63, I think the parties affected by any regulation have a right to be heard against its registry; and though I am aware that, upon the strict question of right, some of my learned brethren have formed a different opinion, yet all the Judges appear to be agreed "that it would be a wrong and capricious exercise of power to preclude a pre-

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vious discussion of a matter which is subjected to appeal." I also think all persons aggrieved by any laws made by the local Legislature should have a right to appeal to the King in Council; a right which exists at present as to regulations affecting the inhabitants of Calcutta, but not as against regulations passed by the Governor-General in Council for the provinces.

It is suggested by Mr. Holt Mackenzie that a veto should be allowed to the Governor-General in the Legislative Council. The 33d Geo. III. c. 52, s. 51, provides that the Governor-General shall not make, repeal or suspend, against the opinion or concurrence of his counsellors, any general rule, order or regulation, for the good order and civil government of the United Company's settlements, or impose of his own authority any tax or duty within the Presidency. The same provisions would of course be extended to the proposed Legislative Council: and if the Governor-General was allowed to have a veto against any laws which had been approved of by the majority of such Council, from the necessity there is of vesting in him a discretionary power to act according to his own opinion in cases of high importance and essentially affecting the public welfare, it would seem, on the other hand, expedient that the Judges should, in cases where the proposed enactment was in their unanimous judgment a direct infringement of some well-acknowledged rights of the Crown, or contrary to some express law made by the Parliament for the government of British India (if not allowed to possess a veto), be at liberty to protest against the act of the majority; the effect of which protest should be the suspension of the law until the King in Council, to whom the matter should instantly be referred, should have decided upon the legality of the proposed measure. Unless some such check as this is vested in the Judges, they would be in the painful situation of being called upon to enforce and carry into effect laws which they were satisfied the Legislative Council had not the power to impose.

I have stated at some length, and I am aware very imperfectly, some of the considerations to which the letter we have had the honour to receive appears to me to lead.

Upon many of the topics upon which I have ventured to touch, I should not have presumed to have offered any opinion of my own, satisfied that it is my duty to assist in administering the laws to the best of my ability, as they are, and not to suggest alterations, had I not conceived the questions proposed by Government necessarily called for such explanations. Whatever may be the course which Parliament in its wisdom may deem proper to adopt, I can only express my cordial desire at all times to assist, as far as I am able, in all measures that may appear calculated to improve and ameliorate the administration of justice in India.

I have, &c.

(Signed) EDWARD RYAN.



MINUTE by Lord W. C. Bentinck, Governor-General; dated 10th Oct. 1829.

THE Judges of the Supreme Court agreeing with the Government on most of the essential points, little remains for consideration here but the particular arrangements by which what is proposed may best be carried into effect.

The detailed exposition given by Sir Charles Grey of the circumstances under which the Court has hitherto acted, able and excellent in every respect, is particularly valuable, as exhibiting in the strongest light (if we may at all argue from the past to the future) the utter hopelessness of setting or keeping things right through the operation of Acts of Parliament passed at home; and the principle advocated by him, of maintaining the complete subordination of the local Legislature to the Parliament, will equally, I imagine, be recognized as one of undeniable necessity.

The measures\* which he suggests for practically enforcing this principle, appear to be well calculated to secure that and other objects of importance, viz. the early and punctual transmission to England of all laws passed in this country, and the periodical incorporation of them into a digested code.

And the conditions† by which it is proposed to limit the powers of the local Legislature, corresponding in substance with most of those suggested by Sir E. H. East, seem to be unobjectionable. The proviso, which is peculiar to the latter, that the law shall be equal to all classes, in matters of common concern, had better, I should think, be omitted, chiefly because it is one of those generalities of which the particular effects cannot be immediately anticipated, and also because it seems to imply a suspicion of injustice, scarcely consistent with the delegation of powers such as are proposed to be given.

With respect to the constitution of the proposed Legislative Council, there is greater room for doubt. If, as appears to be admitted, every notion of representation must, for the present at least, be relinquished, it may, I think, be questioned, whether the choice of

\* It should be provided (Sir Charles Grey suggests) that every act of an Indian Legislative Council should, within one month, be sent to the Court of Directors and the Board of Commissioners; and that, in the next session after the receipt of it in England, it should be laid before Parliament: and that the Court and the Board should have the power of repealing it within one year from the time of its having been made, but with a proviso, that all persons should be saved harmless for any acts done under the regulation before notice of its repeal should have been given in some specified manner; and further, that the Indian Council should, once in seven, ten, fourteen or twenty years, form into one body of law, and submit to the Parliament, the whole of the existing regulations, in order that they might be sanctioned or amended.

† These are as follow: The Legislative Council shall not make any ordinance inconsistent with any Act of the Imperial Parliament applying to India: It shall not alter any part of the unwritten law of the British constitution, on which depends the relations of British India or its people with the United Kingdom: It shall not in any way vary the law of treason, or affect any rights of the Crown, or of the Parliament, or those which may be derived by any foreign State from treaties entered into by them with the British Crown.

The exceptions proposed by Sir E. East are, that no laws should be made contrary to the duty of allegiance, nor contrary to any express law made or to be made by Parliament for the government of British India; and that the laws should be equal in all matters of common concern between native and British subjects for the common good, without favour or disparagement to either.

of legislators should go beyond the Members of the Supreme Council and the Judges of the Supreme Court. I cannot think it would be right to bring into such an assembly the chief minister of the Christian church. There seem to be many reasons to be urged against such an arrangement in India, which it is unnecessary to particularise. The information as to the Hindoo and Mahomedan codes, with a view to which it is proposed to appoint one or more civil servants learned in those laws, may probably be as well obtained, when required, by other means, unless the Supreme Court, as is proposed by Sir Charles Grey, should be composed partly of Judges appointed by the Crown, and partly of judicial servants of the Company; so likewise I should think that, with caution and publicity in the proceedings of the Legislative Council, the interests of the British merchants will be effectually secured; and except we could adopt the principle of representation, which seems out of the question, it would not, I think, add to the weight of the Council, or the confidence of the public, to associate an individual or subordinate functionary with the Members of Government and the Judges of the Supreme Court. It should be remembered that its laws are designed to have effect at all the Presidencies. If any addition were made to the existing established authorities, which I consider for the present to be inexpedient, I should infinitely prefer native gentlemen, whose rank in society and great wealth seem to entitle them to the distinction; while the Council itself would derive from their knowledge of the character, manners and feelings of the natives, that information which the most experienced Europeans so imperfectly possess.

On the whole, therefore, it would, I conceive, be right to constitute the Council as proposed in the letter of the 14th of July.

A veto, it is agreed, shall belong to the Governor-General; and the limitation of the power of the Council being rendered specific (the vague words "repugnant to the laws of the realm" must be carefully avoided), it would seem to be unobjectionable and proper to allow the Judges the power of suspending any enactment which might appear to them to be incompatible with the laws they are bound to administer. It is a fundamental principle of the arrangement proposed by Government that the Acts of the Legislative Council shall extend to all places, and to all descriptions of persons.

Provision should of course be made for the due publication of all proposed laws, and parties interested in opposing them should have full opportunity of stating their objections, either by petition or by argument, authority being also reserved to the Governor-General in Council of appointing committees or commissioners specially to inquire into and report upon all matters necessary to a just determination on the expediency of any law.

The promulgation of laws subsequent to their enactment must also of course be fully provided for.

As to the formation of a general code for British India, with such special provisions as local peculiarities render unavoidable, and the gradual adoption of one consistent system for the administration of justice in all parts of the country, the remarks of Sir Charles Grey appear to be generally just, though he perhaps overrates the advantages to be derived from the services of English lawyers, unless where those of superior men can be secured. But these are objects to be attained only in course of time, through the operation of laws to be adopted, after careful consideration of each, by the proposed Legislative Council.

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Even the general principles, how far the rules of English laws and process shall be maintained, or a simpler system adopted, stripped of its technicalities, shall be substituted; to what extent the English language shall be allowed or enjoined; whether Englishmen shall be permitted to claim any and what special distinctions as to the form of trial, or the tribunal to which they are to be subject, and especially in what cases and within what tracts trial by jury shall be introduced; would require separate and deliberate consideration: and the peculiarities of every province; the expediency of having local rules, distinct from, though of course subordinate to, all general laws; the means of recording and maintaining local usages, where proper to be maintained; these and various other points must be discussed before we can attempt to lay down a general scheme for the better administration of justice throughout the wide regions that will be subject to the proposed Legislative Council.

The necessity of a Legislative Council having been thus established, it would seem right that we should request the aid of the Judges in preparing a scheme for the execution of the measure, to be submitted for the approval of the home authorities.

In the event of the proposition for a Legislative Council not receiving the sanction of Government or of Parliament, it would be desirable that we should now provide for that contingency, by requesting the Judges to suggest, for our concurrence, such alterations in the present Acts as may correct the inconsistencies, and may remedy the inconveniences, which have been so fully detailed in the various communications upon the present subject. It would seem impossible for the home authorities, as experience has hitherto abundantly proved, to furnish the details which a plan of so extensive a nature must require.

(Signed) W. C. BENTINCK.

#### No. 24.

LETTER from the Governor-General in Council to the Hon. Sir Charles E. Grey, Knight, the Hon. Sir John Franks, Knight, and the Hon. Sir Edward Ryan, Knight, Judges of the Supreme Court of Judicature at Fort William.

HONOURABLE SIRS:

Fort William, 20 October 1829.

Governor-General  
in Council  
to Judges of  
Supreme Court.

We have the honour to acknowledge the receipt of your letter of the 2d instant, and of the several papers which accompanied it; and entertaining the strongest sense of obligation to you for the manner in which you have met the wishes expressed in our letter of the 14th of July, we venture confidently to solicit your further aid in the prosecution of those measures which, after an attentive consideration of the important facts, observations and suggestions contained in the documents now acknowledged, it appears to us expedient and necessary to adopt.

To the able exposition which you have made of the circumstances that affect the constitution, and of the principles that have regulated the proceedings of his Majesty's Courts, we shall not venture further to advert than by remarking how strongly the detail given, of the difficulties and embarrassments incidental to the discharge of their functions,

appears

appears to confirm the persuasion, under which we recently addressed you, of the necessity of constituting a local Legislature with enlarged powers. On that fundamental point, it is highly satisfactory to us to find that there exists a complete concurrence of opinion. It remains only therefore to consider the particular arrangements by which what is proposed can best be carried into effect. First, as to the constitution of the Legislative Council: It appears to be generally agreed, that all notion of representation must, for the present at least, be relinquished; and the case being so, it seems to us, after the fullest consideration of the subject, that the Council should consist of the Members of the Supreme Government, and the Judges of the Supreme Court of this Presidency. If, as has been suggested by the Chief Justice, the judicial servants of the Company shall be hereafter admitted to that Court, we should not of course propose to exclude the officers so distinguished from a share in the Legislature. But as things are now constituted, it would not, we are of opinion, add to the weight of the Legislative Council, or to the confidence of the public in its wisdom and justice, to associate any subordinate functionary with the Members of Government and his Majesty's Judges; more especially when we advert to the other Presidencies, to which also the powers of the Council must, we are of opinion, be made to extend. Similar considerations occur to us as opposed to the appointment of any individual, so long as the principle of representation shall be inapplicable to the circumstances of the country. We readily indeed admit that an accession of much valuable information might be obtained by constituting the Legislative Council on a wider basis; but the advantage of having within itself such an extent and variety of information, as may obviate the necessity of frequent inquiry, appears to be unattainable. On questions touching the laws and usages of our native subjects, the Council must, we think, depend chiefly on the result of inquiries more extensive and minute than any one or two individuals could be expected to satisfy. It will always of course be able to command the services of any public functionary, from whom it may require an exposition of any matters with which he may be especially conversant: and with the caution and publicity of proceeding, on which you have justly laid stress, we trust that, excepting from causes inseparably connected with our position in the country, there will be little danger of its remaining in ignorance of any particulars, the knowledge of which may be necessary to secure an equal attention to the interests and just claims of every class of our subjects. Several reasons occur to us against the measure of bringing into such an assembly the chief minister of the Christian church, on which we shall not now enlarge. But though it is in our judgment expedient that, for the present at least, the Legislative Council should be constituted as proposed in our letter of the 14th of July, we would not be understood as objecting to the enactment of a provision which shall leave to his Majesty a greater latitude of selection, if Parliament shall in its wisdom see fit to provide for a change of circumstances.

We have great satisfaction in stating our general concurrence in the principles according to which it is proposed, in Sir Charles Grey's Minute, to limit the powers of the Legislative Council, to maintain its complete subordination to Parliament, to secure a due publicity in its proceedings, to ensure a hearing to all parties interested in opposing any proposed enactment, to enforce the fullest possible promulgation of all laws passed by it, and to provide for their periodical consolidation.

# 1192 FIFTH APPENDIX TO THE THIRD REPORT OF THE

LEGISLATIVE  
COUNCILS,  
&c.

Governor-General  
in Council  
to Judges of  
Supreme Court.

We likewise fully concur with you in thinking that, besides reserving a veto to the Governor-General (the restriction contained in the 33 Geo. III. c. 52, s. 51, should also of course be maintained), it will be entirely proper that the Judges of the Supreme Court, or a majority of them, should have the power of suspending the enforcement of any Act of the Legislative Council which they may consider to be illegal.

Having thus explained to you the views which we entertain in regard to the constitution of the proposed Legislative Council, little differing, we are happy to observe, from those which you suggest, we trust we may be permitted to request that you will have the goodness to prepare the draft of a bill for the execution of the measure, to be submitted for the approval of the home authorities.

Strongly as we are impressed with the indispensable necessity of constituting a local Legislature, as proposed, we consider it proper to provide for the contingency of the proposition not receiving the sanction of Government or of Parliament; and we shall consequently be greatly obliged by your suggesting, for our concurrence, such alterations in and additions to the present Acts applicable to India, as it may appear to you expedient to make, with the view of correcting the inconsistencies and remedying the inconveniences which have been so fully detailed in the papers now under consideration, as far as that object can be attained through the direct intervention of Parliament.

It will likewise be highly satisfactory to us to receive from you a full communication of your views and sentiments, in regard to the measures by which the administration of justice to all classes of persons throughout the British territories may be gradually provided for, on a regular and consistent system, with such special provisions only as local peculiarities may render unavoidable.

But it is not, of course, our intention that the preparation and transmission of the draft above mentioned should be delayed until the details, which each of the latter propositions must involve, can be furnished.

We beg to add, that we shall instruct the Secretaries to Government to afford immediate attention to any request for information which the Judges may be desirous of obtaining from the records of Government.

We have, &c.

(Signed) W. C. BENTINCK.  
C. T. METCALFE.

True copies :

(Signed) HOLT MACKENZIE,  
Secretary to Government.

No. 25.

(No. 4 of 1830.)—(Territorial Department.)

**LETTER** from the Governor-General in Council to the Court of Directors,  
&c. &c. &c.

LEGISLATIVE  
COUNCILS,  
&c.

Governor-General  
in Council  
to Court of  
Directors.

**HONOURABLE SIRS :**

Fort William, 14th October 1830.

Your Honourable Court is aware, from the documents which accompanied our Secretary's Letter under date the 20th of October last, that we have for some time been in communication with the Judges of the Supreme Court, on the subject of the measures to be taken for the amendment of the laws applicable to the different classes of persons resident within the British territories, and for the establishment of such a judiciary system as might ensure their prompt and just administration, with reference especially to the circumstances incident to the more extended settlement of British-born subjects, with permission to hold land. We have now the honour of transmitting to you, as numbers in the packet, copies of the papers noted in the margin,\* in continuation of those which were forwarded to you on the above date.

2. We beg permission to call your early and particular attention to the draft of a bill (as finally amended) and the papers immediately relating to it (Nos. 2, 3, and 4), and to submit our recommendation that the necessary measures may be taken to obtain the enactment, by the British Legislature, of a law corresponding with that draft, with any modifications or additions that may appear to be necessary or expedient. The grounds on which we consider such a law to be urgently and indispensably required, and the considerations which have influenced us in the adoption of its several clauses, are so fully explained in our correspondence with the Supreme Court, that it must be superfluous to enlarge upon the subject in this place. It may be sufficient to state that, in our judgment, the members of the Legislative Council should not, in the first instance at least, be numerous. It may eventually be proper to enlarge it; and the number to be inserted in the bill, which in the draft is left blank, your Honourable Court will best be able to determine. Besides the Members of the Supreme Council, and the Judges of the Supreme Court, we are not prepared to hazard an opinion as to what individuals should be admitted into the Legislative Council, or from what classes and on what principles, the selections should be made. These indeed are points which, we think, should be left exclusively to the decision of the home authorities.

3. We shall only add, that we hardly consider necessary the precautionary measure adverted to in the concluding paragraph of the Judges' letter, dated the 13th instant.

4. A copy of any reply which we may receive to the letter we addressed to the Judges  
on

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- \* Letter from the Judges of the Supreme Court, dated the 13th September 1830, with four Enclosures.
  - Ditto to ditto, dated 20th September 1830, with its Enclosures.
  - Ditto to ditto, dated 9th October 1830.
  - Ditto from ditto, dated 7th October 1830.
  - Ditto to ditto, dated 11th October 1830, with its Enclosure.
  - Ditto from ditto, dated 13th October 1830, with its Enclosure.

# 1494 FIFTH APPENDIX TO THE THIRD REPORT OF THE

LEGISLATIVE  
COUNCILS,  
&c.

Governor-General  
in Council  
to Court of  
Directors.

on the 11th instant, on the subject of the Enclosures 2, 3, and 4 of their letter dated the 13th ultimo, will be forwarded to your Honourable Court with all practicable dispatch.

We have the honour to be, &c. &c.

(Signed)

W. BENTINCK.

W. B. BAYLEY.

C. T. METCALFE.

(Fort William.—Revenue Department.)

ABSTRACT of Revenue Letter, No. 4, of 1830, addressed to the Honourable Court of Directors, dated the 14th October 1830.

Forwarding with reference to Papers transmitted on the 20th October 1829, copy of Correspondence with the Judges of the Supreme Court of Judicature of Fort William, in Bengal, relative to the institution of Legislative Councils, the establishment of a judiciary system, and the formation of a code of laws for the British territories in the East-Indies.

(Signed)

HOLT MACKENZIE,

Secretary to the Government.

No. 26.

LETTER from the Judges of the Supreme Court to the Governor-General in Council; submitting Papers relative to the institution of Legislative Councils, the formation of a Code, and the establishment of a System of Courts.

Calcutta, 13th September 1830.

RIGHT HONOURABLE LORD AND HONOURABLE SIRS :

Judges of  
Supreme Court  
to Governor-Gen.  
in Council.

We have given from the first all the attention in our power to the subjects mentioned in the letter which you addressed to us on the 20th of October last, and having had the benefit of conferring personally with you upon some occasions, we now submit to your consideration the accompanying papers, viz. No. 1, intituled " Heads of a Bill, to be " intituled an Act for establishing Legislative Councils in the East-Indies." This you are aware is not a paper of our own, but one which, with the assent of us all, though not with an absolute unanimity as to minor points, was arranged at the conferences to which you did us the honour of admitting us. No. 2, intituled, " Some observations on the " suggestion of the Governor-General in Council, as to the formation of a code of laws " for the British territories in the East-Indies." No. 3, " Outline of a system of Courts " for the British territories in the East-Indies."

You have signified your wish that specific provisions for the last object should be annexed



annexed to those which relate to the establishment of Legislative Councils, and which have been reduced into the form of a bill; but perhaps the papers Nos. 2 and 3 will indicate sufficiently both the outline of the arrangements which would occur to us, if any extensive alteration in the system of Courts should be made, and the difficulties which prevent us at present from reducing our notions upon the subject into the form of a bill. Without knowing better than we do the views of his Majesty's Ministers, and of the Court of Directors, we can form but very uncertain conjectures of what is practicable, or at least of what would be adapted to the ground-work on which it may be intended to re-establish the Government of India.

As long as the East-India Company may continue not only to have that right of perpetuity which is annexed to its character of a trading corporation, but actually to carry on trade, it will probably be thought that there must be some Courts in India, not only of appellate, but of original jurisdiction, of which the Judges shall be appointed immediately by the Crown, if for no other reason, yet for this at least, that the Company may sue and be sued in their commercial capacity, before some tribunals not constituted by themselves, nor consisting merely of their own civil servants, whom the most perfect integrity never can exempt from the impression, that they are too dependent on the Company to act as Judges in questions between them and other British persons; but if the Company should ever cease to trade, or even if that separation of their proceedings in their commercial from those in their political capacity, which, to a certain extent, was provided for by the 53 Geo. III. c. 155, should now be carried further and completed; one objection, at least, against all the Courts of original jurisdiction being put upon the footing of Company's Courts, might be removed.

A general admission of British persons into the provinces, or any parts of them, with the right of holding lands in fee, would present a state of circumstances requiring in the arrangements of Courts of Justice some different provisions from those which would be suitable to a system, founded upon a prohibition of the intercourse of British persons with the interior of the country. These and several other undecided and doubtful points, of the gravest importance as matters of state policy, and to which, as to the foundation on which it would rest any bill for the general administration of justice must be accommodated, prevent us from offering anything more than mere suggestions as to the formation of any code of law and system of Courts. We are prepared, however, to say, that there is no arrangement which we are able to anticipate, in which it does not seem to us that it would be desirable there should be a Legislative Council for India, or one for each Presidency, subordinate to the Imperial Parliament; and in like manner one Court for India, or one for each Presidency, of intermediate appeal between the superior Courts of this country and his Majesty in Council, or the House of Lords; and that of these Legislative Councils and Courts of Appeal, a majority of the Members and Judges should be appointed immediately by the Crown, we should say indeed that the whole ought to be so appointed, but that a portion of them should be selected by the Ministers of the Crown from amongst the Company's servants; and it might perhaps be thought more regular to establish any such Courts of Appeal by Letters Patent of the Crown, issued under the authority of an Act of Parliament, rather than by Act of Parliament alone. Whether such Legislative Councils and Supreme Courts of Appeal could

LEGISLATIVE  
COUNCILS,  
&c.

Judges of  
Supreme Court  
to Governor-Gen.  
in Council.



LEGISLATIVE  
COUNCILS,  
&c

Judges of  
Supreme Court  
to Governor-Gen.  
in Council.

could at present, and all at once, be brought into active and effectual operation for all India, is perhaps more than doubtful, and our own inclination of opinion would be to attempt to give them effect within some one limited district, with a liberty at the same time to the Governor-General in Council to make use of them for the rest of the territories in cases in which they could be employed for that purpose with advantage. Our views of this matter are stated in the draft of a letter which we are about to send in reply to one received by us from the Secretary of the Board of Commissioners for the Affairs of India. Of this draft, we take the liberty of enclosing a copy, marked No. 4, and if any objection should be felt by the Governor-General in Council against any statements in it, we would willingly re-consider them, and make any corrections which may be desirable with the least possible delay.

It has been with unfeigned reluctance indeed, and some apprehension of giving offence, that we have spoken as plainly as we have done upon several points both in that letter and in the other papers which are now submitted to you; but upon a subject respecting which, from its extent and intricacy, all opinions are so liable to be misunderstood, those which are stated otherwise than plainly and fully may serve for much mischief, but can scarcely do any good. We beg leave to assure you, in all sincerity, of our desire to render any assistance of which we may be thought capable, upon this occasion of the re-establishment by Parliament of the Government of the British territories in India. In so vast an affair it is impossible that any persons can act together unless there be a willingness on all sides to make some sacrifices of opinion; and of the greater part of what we have taken the liberty to suggest, we hope it will be understood that it is intended as nothing more than suggestion, and that it is susceptible of various modifications. The only principles which we are desirous should be considered as fixed, are such as we are confident all of us are fully agreed upon, namely, that all the Indian territories which constitute the three Presidencies are dominions of the Crown of the United Kingdom, though with all such conditions annexed as have been stipulated in any treaties or agreements made at the time of the acquisition of the territories; that Parliament has an unquestionable right of legislating for the whole of the Indian dominions of the Crown, notwithstanding that certain powers of legislation have been and may hereafter be committed to others by Act of Parliament, or permitted to subsist in the hands of others as a remnant of the former institutions of the country; and that although justice must in general be administered in India by Indian Courts, yet wherever circumstances will admit of a sufficiently regular frame of Government being established, the appeal or the last resort ought to be some Court or Courts of the United Kingdom, or some Courts in India, of which the Judges should be appointed immediately by the Crown.

We have the honour to be, &c.

(Signed)

CHAS. EDW. GREY.  
EDWARD RYAN.

True copy :

(Signed)

HOLT MACKENZIE,  
Sec. to the Government.

# SELECT COMMITTEE OF THE HOUSE OF COMMONS. 1197

(Enclosure, No. 1.)

LEGISLATIVE  
COUNCILS.  
&c.

Papers submitted  
by Judges.

Heads of Bill.

HEADS of a BILL to be intituled "An Act for establishing Legislative Councils in the East-Indies."

1. WHEREAS the Civil and Military Government of the Presidencies of Fort William, Fort St. George and Bombay, in the East-Indies, subject to such superintendence, direction, controul and restrictions as for that purpose have been provided and established, is entrusted to the Governor-General in Council and the Governors in Council of the said Presidencies, and also the ordering, management and government of all the territorial acquisitions and revenues therein: And whereas the said Governor-General in Council and Governors in Council have been authorized and empowered by several Acts of Parliament to make rules, ordinances, regulations and laws, as well for the imposition of duties and taxes as for divers other purposes; and it hath been enacted, that all regulations affecting the rights, persons or property of the natives, or of any other individuals who may be amenable to the Provincial Courts of Justice, shall be registered in the Judicial Department and formed into a regular code; and it hath also been provided, that the rules, ordinances and regulations made for the settlements at Fort William, Fort St. George and Bombay, and the factories and places subordinate thereto, shall be registered in the Supreme Courts of Judicature at the said settlements, with the consent and approbation of the said Courts; and further provisions have been made for the better enabling of his Majesty in Council in some cases to disallow or repeal, and in others to amend, such rules, ordinances or laws: And whereas it is necessary that a power should at all times be vested in some persons resident within the British territories in the East-Indies, of making regulations and laws for all the territories and people there under British Government: And whereas the several Acts of Parliament which have heretofore been passed for that purpose have been found to be in some respects imperfect and inconvenient, and it is expedient that more full, certain and effectual provisions should be established instead of them; be it therefore enacted, that so much of an Act, intituled, &c.

13 Geo. III. c. 63, s. 36, 37.

21 Geo. III. c. 70, s. 23.

37 Geo. III. c. 142, s. 8.

39 and 40 Geo. III. c. 79, ss. 11, 18, 19, 20.

47 Geo. III. sess. 2, c. 68, ss. 1, 2, 3.

53 Geo. III. c. 155, ss. 98, 99, 100.

and so much of every other Act heretofore passed as in any way relates to the making of any laws or regulations by the Governor-General in Council, or the Governors in Council of any of the said Presidencies, be, and the same are hereby repealed: Provided always, and be it further enacted, that nothing herein contained shall be construed so as to repeal any regulations heretofore made by any Governor-General in Council or Governor in Council; but all such regulations, until they be expressly repealed or altered by some competent authority, shall have the same force and effect as they would have had if this Act had not been passed.

LEGISLATIVE  
COUNCILS,  
&c.

Papers submitted  
by Judges.

Heads of Bill.

2. And be it further enacted, That there shall be one Legislative Council within each of the said Presidencies of Fort William, Fort St. George and Bombay.

3. Each of the said Legislative Councils shall consist respectively of the Governor-General, or Governor of the Presidency for the time being, and of all other the Members of the Council of the Presidency, and of the Judges of the Supreme Court of Judicature of the Presidency, and of such other persons, not exceeding — in numbers, from time to time shall be appointed by his Majesty, his heirs or successors, or by the Directors of the East-India Company, by and with the approbation of his Majesty, his heirs or successors.

4. Each of the said Legislative Councils, or so many of the members thereof as shall be able to attend, shall meet and assemble from time to time at some convenient place, to be appointed by the Governor-General, Governor or Vice-President, within the towns of Calcutta, Madras and Bombay respectively, or in the neighbourhood, and within some convenient distance of the same, at such times and in such manner as such Governor-General, Governor or Vice-President, shall also direct; and it shall not be lawful for any of the said Legislative Councils to assemble in the capacity of a Legislative Council otherwise than is herein provided.

5. Each of the said Legislative Councils shall be capable of deliberating, resolving and acting in its capacity of a Legislative Council whenever three members thereof shall be lawfully assembled, provided that one of the three be either the Governor-General, Governor, Vice-President, or some other Member of the Council of the Presidency, and another be one of the Judges of the Supreme Court, but not otherwise, unless there should be no Judge then resident, or unless upon any urgent occasion there should be any refusal or wilful neglect of the Judges then resident at the place at which, or in the neighbourhood of which, any of the said Councils shall be held; in either of which cases, and after a Minute to that effect shall have been entered upon the proceedings of any such Legislative Council, and signed by the Governor-General, Governor or Vice-President for the time being, it shall be lawful for any three members of any such Council who may be assembled upon any such occasion to deliberate, resolve and act in all respects as a Legislative Council, in the same way as if one of the Judges had been present: And be it further enacted, that all the proceedings at any meeting of any such Legislative Council shall be conducted as nearly as possible in the same manner and form as the proceedings before the Governor-General in Council are by statute directed to be conducted, except that no Governor-General or Governor shall have any power of making any law or regulation, nor of deciding any question whatsoever which may arise in any such Legislative Council of his own sole authority: Provided always, and be it further enacted, that no law or regulation of any of the said three Legislative Councils shall be deemed or taken to have been finally resolved upon and established, nor shall have any force or effect whatsoever until the consent in writing of the Governor-General of Fort William in Bengal, shall have been first obtained and annexed thereto; and that no law or regulation of either of the Legislative Councils at Madras and Bombay shall have any force or effect until it shall have been confirmed by the Legislative Council of the Presidency of Fort William in Bengal, for which purpose, as soon as it shall have been fully resolved upon, it shall be sent to the Legislative Council of the Presidency of Fort William

William in Bengal; and it is hereby further enacted, that the Legislative Council of the said Presidency of Fort William shall have full power and authority to make regulations and laws, as well for the other Presidencies of Fort St. George and Bombay and for all the territories and territorial acquisitions in the East India in the possession and under the government of the East-India Company, in the same manner as for the Presidency of Fort William itself, whensoever to the said Legislative Council of the Presidency of Fort William it shall appear that there is occasion so to do; and shall also have the power of repealing or altering any regulations or laws heretofore made by any Governor in Council, or hereafter to be made by any Legislative Council of either of the said Presidencies of Fort St. George or Bombay.

6. Every law or regulation, after it shall have been resolved upon by any of the said Legislative Councils, and before it shall be submitted to the Governor-General of Fort William for the purpose of having his consent in writing annexed thereto, and before it shall be sent by the Legislative Council of Fort St. George or Bombay to the Legislative Council of Fort William, shall be sent round to every resident Member of the Legislative Council by which such law or regulation shall have been made; and each resident Member, whether he shall or shall not have attended the meetings of the Council at which such law or regulation shall have been deliberated or resolved upon, shall signify in writing his assent or disapprobation thereof; and if any two of the Judges of either of the Supreme Courts, or in case there be only two or one of the Judges resident at the time, then if the only Judge or the Chief Justice, or in his absence the Senior Judge of the Supreme Court of the Presidency at which the law or regulation shall have been passed, shall state his or their disapprobation thereof, by reason of his or their opinion and belief, that such law or regulation is not within the powers vested by this or any subsequent Act in the Legislative Council by which the law or regulation shall have been made, and shall also state his or their grounds or reasons for such opinion and belief, then the law or regulation respecting which such opinion and belief shall be so stated as aforesaid shall be suspended, and shall have no force nor effect until such time as it shall have been referred to the President of the Board of Commissioners for the Affairs of India for the time being, and to the Directors of the East-India Company, and until the orders of such President respecting the same shall have been received in India; and the said President for the time being is hereby authorized in all such cases to submit any such law or regulation to his Majesty in Council, and after having so submitted the same, to issue his orders to the Governor-General of Fort William for the revocation or suppression, or the publication and enforcement of the law or regulation; and if any such law or regulation shall be so directed to be published and enforced, it shall after such publication have the same force, authority and effect, and no other, as if no such suspension as hath hereinbefore been mentioned had taken place.

7. The powers of each of the said Legislative Councils, to be exercised in manner and form as aforesaid, shall extend to the making of laws and regulations for the repealing, amending or altering of any regulations heretofore made by any Governor-General in Council, or Governors in Council, or hereafter to be made by any of the said Legislative Councils, and to the making of laws and regulations for all other purposes whatsoever, and for all manner of persons, whether British or native, or foreigners or others, and for

LEGISLATIVE  
COUNCILS,  
&c.

Papers submitted  
by Judges.

Heads of Bill.

LEGISLATIVE  
COUNCILS,  
&c.

Papers submitted  
by Judges.

Heads of Bill.

all places and things whatsoever, within and throughout the whole and every part of the British territories in the East-Indies, in the possession and under the government of the East-India Company, except as hereinafter is excepted, and subject to the conditions and restrictions hereinafter expressed, and at all times and in every respect subject to the full, absolute and supreme legislative power and control of the Imperial Parliament of the United Kingdom of Great Britain and Ireland: Provided always, that no law or regulation, made by either of the said Legislative Councils for the Presidencies of Madras or Bombay, shall at any time have any force, authority or effect, except within the limits of the territories constituting the Presidency, by the Council of which it shall have been made.

8. No law made by any of the said Councils shall in any way repeal, vary, suspend or affect any Act of the Imperial Parliament, nor any Letters Patent of the Crown, nor in any way affect any prerogative or right of the Crown or Parliament, nor the constitution or rights of the East-India Company, nor any part of the unwritten law or constitution of the realm of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any persons to the Crown, or the sovereignty or dominion of any part of the British territories in the East-Indies.

9. As soon as any law or regulation shall have been resolved upon, and passed at any lawful meeting of any of the said Legislative Councils, it shall forthwith be published in the Government Gazette, or some other newspaper of the place, before it shall be sent round to the resident Members of the Legislative Council and to the Governor-General of Fort William, for the expression of their approbation or dissent, in writing, and an interval of fourteen days at the least shall take place, from the time of the first publication, before the Governor-General shall give such consent; and if any person or persons interested in or affected by any such law or regulation, shall petition any such Council to take into consideration his or their objections against it, at any time before the consent in writing of the Governor-General of Fort William for the establishment of such law or regulation shall have been given to the Governor-General, or Governor or Vice-President of the Presidency, at which the law or regulation shall have been made, shall direct at what time and place any such person or persons shall state his or their objections, and whether by written petition only, by counsel, or in person; and it shall be lawful for any person or persons who may be aggrieved by any such law or regulation, to appeal against the same to his Majesty the King in Council, who shall have full power and authority at any time to repeal the same, but such appeal or notice thereof shall be made or given within six calendar months of the publication in India of the law or regulation which shall be the subject of appeal.

10. As soon as one week shall have elapsed after any law or regulation shall have been established by any resolution of any of the said Legislative Councils, and by such written consent of the Governor-General, as hereinbefore has been made necessary, the same, if no sufficient cause shall have been given for the suspension thereof in manner aforesaid, shall be carefully registered, and preserved as a record by such Legislative Council, and shall be printed and published in the English language; and for the better securing of a general and accurate publication thereof, one printing-office or press, for each Presidency, and no more, shall from time to time be licensed by the Governor-General

## SELECT COMMITTEE OF THE HOUSE OF COMMONS. 1901

General in Council, or Governor or Vice-President in Council, of the Presidency, to print and publish the laws of each Legislative Council; and the granting or changing of such licenses shall from time to time be notified by proclamation or public advertisement; and each of the said Legislative Councils shall, from time to time, make such standing orders as may be most convenient and effective for the due publication of such laws, in as many of the languages of India, and in such manner as may most effectually secure a speedy, full and complete promulgation thereof throughout the British territories in the East-Indies, so that the knowledge thereof may be communicated to all who may be liable to be in any way affected thereby.

11. If any person or persons shall wilfully publish any false statement of any law of any of the said Legislative Councils, he or they shall be deemed guilty of a misdemeanor, and shall be punished accordingly; and if any person shall suffer damage or loss in consequence of being misled by any such false statement, it shall be a good cause for his recovering damages in a civil action, to be instituted against the party or parties by whose false statement he shall have been so misled.

12. Within one month after the passing and registering of any law or regulation by any of the said Legislative Councils, the Governor-General in Council, or Governors or Vice-President in Council, shall send duplicate copies of the same to the Court of Directors of the East-India Company, and to the President or Secretary of the Board of Commissioners for the Affairs of India; and at any time within one year from the first receipt of any such law or regulation, it shall be lawful for the President of the said Board of Commissioners, after having submitted the same to his Majesty in Council, to transmit to the Legislative Council of the Presidency of Fort William an order for the repeal of the same, and the same shall be forthwith repealed: Provided always, that all acts done under and according to any such law previous to such repeal thereof, and during its continuance, shall be good and valid; and all persons shall be saved harmless for any thing by them done, or omitted to be done, in obedience to or compliance with any such law, before the time at which they shall have had, or with due care and watchfulness might have had, notice of the repeal thereof.

13. Nothing herein contained shall extend or be construed to extend to the affecting in any way of the right or power of the Imperial Parliament to make laws for the British territories in the East-Indies, and for all the inhabitants thereof; and it is expressly declared, that a full, complete and constantly existing right and power is intended to be reserved, and is hereby reserved to the Imperial Parliament of the United Kingdom of Great Britain and Ireland, to control, supersede or prevent, by Act of Parliament, all proceedings and acts whatsoever of the said Legislative Councils, and to repeal and annul at any time any act, law or regulation whatsoever, by the said Councils at any time made or done, and in all respects to legislate for the British territories in the East-Indies, and the inhabitants thereof, in as full and ample a manner as if this act had not been passed; and the better to enable the Imperial Parliament to exercise at all times such authority, power and right, the President of the Board of Commissioners for the Affairs of India shall, once in every Session of Parliament, lay before both Houses of Parliament the Laws and Regulations of the said Legislative Councils, which, since the foregoing Session, may have been transmitted to him or to the Secretary of the

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# 1202 FIFTH APPENDIX TO THE THIRD REPORT OF THE

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said Board as hereinbefore is provided; and once in every period of ——— years the said Legislative Councils shall transmit to the President of the Board of Commissioners, and the said President shall lay before both Houses of Parliament, the whole of the subsisting laws heretofore made by the said Councils, and then remaining unrepealed and in force; and the said Councils, before such transmission of the same, shall cause the same to be methodically and systematically arranged, and shall annex thereto such tables, indexes, glossaries, and other explanatory documents and materials as may be conducive to the true understanding of the same.

14. All laws and regulations which shall be made and published by the said Legislative Councils in the manner and form hereinafter provided, as long as they shall remain unrepealed and unaltered, shall be of the same force and effect within and throughout the British territories in the East-Indies, and every part thereof, as any act of the Imperial Parliament is, would or ought to be within the same territories, and shall be taken notice of by all Courts of Justice whatsoever within the same territories, and in every part thereof, in the same manner as any public act of Parliament would and ought to be taken notice of, without being specially pleaded or put in evidence.

(Signed) CHAS. EDW. GREY.  
EDWARD RYAN.

A true copy:

(Signed) HOLT MACKENZIE,  
Secretary to the Government.

(Enclosure, No. 2.)

Some OBSERVATIONS on a Suggestion by the Governor-General in Council, as to the formation of a Code of Laws for the British Territories in the East-Indies.

Observations on  
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IT may be said, with sufficient precision for the present purpose, that the whole body of Municipal Law, in any country, may be comprehended within the divisions into which Sir William Blackstone has separated the English Law: First, the rights of persons, or the distribution of political power, privileges, rights and duties. Secondly, the rights of things, or the law of property in things immoveable and in things moveable, together with the law of contracts. Thirdly, private wrongs, or the definition of injuries done by persons to each other, for which the law provides remedies and the means of compensation, together with the courses prescribed for the attainment of such remedies. Fourthly, public wrongs, or the definition of those injuries which are not susceptible of compensation, and are supposed to have a direct effect upon the interests of the whole body of the people, together with the courses established for attaching such consequences to injuries of this sort as may deter others from being guilty of them. As to the first of these divisions of law, namely, the rights of persons, it has always hitherto been, and is likely to remain in India, in so deplorable and discreditable a state of confusion, that it is scarcely possible to speak of it with the plainness which is requisite for showing the real state



state of the case, and yet with the respect which is due to it as the existing law. The most opposite notions are allowed to prevail upon points, respecting which, it is of the utmost importance that no doubt which can be removed should continue to subsist. There is no uniform, or definite opinion, either as to the true character and incidents of the Sovereignty of the Crown, nor of the dependence of the laws on Parliament, nor as to the rights either of political power or of property of the East-India Company, nor even of the relation in which the many millions of natives stand to the political authorities by which they are entirely governed. Different races of natives have different grounds of political right; as to one class of them, it is even disputed under which of two different systems of law it is that they live. Amongst the Hindoos and Mahomedans there are persons not even claiming any sovereignty, to whom the Governments have nevertheless stipulated an exemption from law, or at least from all Courts of Justice. Amongst the British authorities we have Courts, which the Legislature has made Supreme, yet to which no other Courts are allowed to be subordinate; Commissions of the Peace, which are sealed by the Supreme Courts, but are directed almost exclusively to persons who are judicial or magisterial officers of the Company, and who have been recently declared by the Privy Council to be exempt in that character from the controul by mandatory writs of the Courts out of which their commissions as Justices issue; so that from the difficulty of distinguishing what is done by them in one character from what is done in the other, the consequence must be, that in both they will no longer be responsible to any but the Governor-General in Council. There are Acts of Parliament commanding the Supreme Courts to take evidence for the House of Lords, and for special tribunals in England, constituted *inter alia*, for the prosecution of offences by the officers of the Indian Governments; and there are Letters Patent on the other hand, forbidding the Supreme Courts to call for the evidence of natives, except according to the practice of the Company's Courts, or in other words, except as the Indian Governments and their officers will permit. The rights and powers of all the Court's officers, and other persons, which depend on Regulations of the Governments, are subject at all times to change; and there is no adequate provision for keeping them in harmony with Acts of Parliament and Letters Patent of the Crown which apply to India. In this state of circumstances, no one can pronounce an opinion, or form a judgment, however sound, upon any disputed right of persons, respecting which doubt and confusion may not be raised by those who may choose to call it in question; for very few of the public, or persons in office at home, not even the law officers, can be expected to have so comprehensive and clear a view of the present Indian system, as to know readily and familiarly the bearings of each part of it on the rest. The title that is sound in it is obscured by ill-defined pretensions on all sides, and by shreds and patches of law of every texture and hue; some, the remnants of what has long been worn out, and others, the samples of what, at different times, it has been the design of one party or another to manufacture. There are English Acts of Parliament specially provided for India, and others of which it is doubtful whether they apply to India wholly, or in part, or not at all. There is the English common law and constitution, of which the application, in many respects, is still more obscure and perplexed. Mahomedan law, and usage; Hindoo law, usage and Scripture; Charters and Letters Patent of the Crown; Regulations of the

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Governments; some made declaredly under Acts of Parliament particularly authorizing them, and others, which are founded, as some say, on the general powers of Government entrusted to the Company by Parliament; and, as others assert, on their rights as successors of the old Native Governments; some Regulations require registry in a Supreme Court, others do not; some have effect generally throughout India, others are peculiar to one Presidency or one town. There are commissions of the Governments, and circular orders from the Nizamut Adawlut, and from the Dewanny Adawlut; treaties of the Crown; treaties of the India Governments; besides inferences drawn at pleasure from the application of the *droit public* and law of nations of Europe, to a state of circumstances which will justify almost any construction of it, or qualification of its force. Such a state of things, though it may not be justly liable to blame (inasmuch as it may have been unavoidable), and though a great part of it may be better than anything which could be readily substituted, can scarcely subsist as a whole without disturbing the course of good government even within the United Kingdom; and it would, no doubt, be very desirable that so confused a tangle should be disentangled; and that as much as possible of it should be arranged and permanently fixed by Acts of Parliament, or Letters Patent authorized by Act of Parliament, or Regulations made under Acts of Parliament, and in conformity with the powers granted by them, and that whatever it may be necessary to leave in a more loose state, should be declared to be so left only because it is necessary, and that time must elapse before all can be reduced to order. Until something be done in this way, it will scarcely be possible to make any satisfactory provisions for the establishment of Courts, and the administration of justice. But, on the other hand, it must be remembered, that in proportion to the extent and variety of the subject-matter, and the obscurity in which it has been involved, must the difficulty be of applying a remedy to it. There cannot, however, be any such insuperable difficulty, that the relations in which the Crown, the Parliament, the Company, and the inhabitants of India stand to each other, might not be declared, and a foundation be thus laid upon which a regular and well-defined structure of law and government, adequate to the good management of a limited district, might be established at present, and afterwards extended. As to the second branch of law, or the law of property, it would not be difficult to put the rights of property in things moveable, together with the law of contracts, upon one footing for all descriptions of persons in India. No great mischief apparently would arise from providing that, in such matters, the law of England should also be the law of India, and the benefit which would be obtained, would be that there would be the same law for all places. As to immoveable property, or property in land, it is a subject of much greater difficulty and embarrassment. The customary interests of the immediate cultivators of the soil are, throughout all India, obscure, various, and uncertain. It is those interests which present the real obstacle to the admission of British persons to hold landed estates. There could not be any insuperable difficulty in providing against any danger arising to the Government from British residents in the interior, nor in protecting the native inhabitants against their open violence. A power of summary transmission would be more than sufficient. But the real difficulty would be to reconcile the existence of zemindary and talookdary rights in the hands of British persons, with the preservation of the customary rights of the ryots or other persons holding under them.

Custom

## SELECT COMMITTEE OF THE HOUSE OF COMMONS. 1805

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Custom and usage ought to be the criterion of such rights, and if there was a sufficient number of good Courts of Law, well adapted in all their circumstances to the decision of such disputes, though it cannot be said there would be an end of the difficulty, yet the same means would be provided by which similar difficulties have been overcome in other states. • But when the arrears of the Country Courts exceed 100,000 causes, and when the Government, in despair of being able to provide a sufficient number of British Judges, are committing the administration of justice, for the most part, to native persons, it would seem to be illusory to hold out a general permission to British persons to buy lands throughout India. If they were to purchase the rights of zemindars or talookdars, and had no appeal but to a Mahomedan or Hindu Judge against the claims of the revenue officers from above, or the ryots from below, they would very soon be glad to abandon their bargains. The only course which in such circumstances seems to show any reasonable prospect of forming any good laws respecting land, is that of separating some one province or district from the rest, in which the revenue has been already permanently settled, and in applying within that district all the means of Government to the purpose of adjusting and fixing the complicated interests of all the classes of landholders, and of reducing them by degrees to simpler and more convenient forms. This has been one necessary step in the progress of civilization in our own country, and in almost every other which has ever come to be far advanced in civilization; nor is there anything in the customary rights of Indian Biswadars or Meerasseedars, which it would be more difficult to deal with, if instead of attempting all India at once, a portion of the country of manageable extent were selected, than there has been heretofore in reducing the fantastic and vexatious varieties which had grown up in France and England under the feudal system, to the better forms of landed property which now prevail. If a general permission to purchase lands were to be extended only to some small province, such as the Delta of the Ganges, with a privilege for retired servants of the Company, of a certain standing and residence in India, to hold lands within a somewhat larger circle, the plan might be manageable. Sufficient Courts might be established or commissions issued for settling the landed tenures; a concentration of capital, skill and social civilization might be preserved, which would be almost as necessary to the welfare of a new and distinct set of proprietors of land established in an old country, as the concentration of labour is found to be in a new country; and if a law were made, that after a specified period, no other estates in land should be created by purchase within these districts than fee simple, or lease for years or for life, and provisions should be gradually made also for the purpose of ultimately accomplishing, not merely that which was done in Ireland, by the abolition of the British tenures, but that still more wholesome measure, which was accomplished in England at one stroke, by the English statute of Charles II., namely, the resolving of all existing varieties of tenures into two or three of well defined characters and incidents. The old tenures, which have been the spontaneous growth of different times and different circumstances, would fade away, or a perception of the benefits of the simpler system would perhaps cause all estates very soon to be cast anew, by the choice of their owners, in these new moulds. At first, if such a safeguard should be thought necessary, the lands

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of Europeans need not be either inheritable or capable of being devised; but a condition might be annexed to such estates, that the executors, within a year after the death of the owner, should sell, and the produce of the sale should be a part of the assets. The children and widow, or the next of kin, or legatees of the owner, would in this way get the whole benefit of any improvements made by him, and yet the inconvenience that might arise from the land devolving upon infants or persons living out of India, or merely come thither, would be avoided. At some future period, when it might be thought right to make the lands of Europeans liable to succession, or capable of being inherited, they might be made, in the absence of a will, partable amongst all the children, but the owner might have the power of devising them by a registered will to any one of his children. This plan would neither exclude nor rigidly enforce the succession of one only, which by many persons is thought so beneficial, and it would not be very different in effect from the present law of England, where the ordinary course is the succession of one, but the owner in fee simple has the power of devising the estate to all, or of charging it, or ordering to be sold for their benefit. The upshot, indeed, of all that has been said and written for and against the rule of primogeniture in the inheritance of lands, seems to be very little more than that, in cases in which a father dies in possession of means which enable him to make his eldest son a proprietor of a landed estate, at the same time that he can leave a suitable maintenance to his widow and a sufficiency to his younger children, it is better to make this arrangement than to divide equally the whole of his property, because it is desirable to keep up classes of landed proprietors of different degrees of wealth, as better persons to fill the gulf which lies between the Sovereign and the peasant, than mere functionaries of the Government; but that where a landed estate cannot be kept in the hands of one, except by leaving his other children in uncomfortable circumstances, it is better that the owner should divide the whole. The law, as it now exists in England, abstractedly considered, is better perhaps than that which is here suggested for India, because it tends less to joint-tenancy and tenancy in common, either of which impedes cultivation and improvement, and as we know from experience here, gives rise to ruinous disputes. But with reference to the habits and settled notions of the natives, it would not be desirable to provide at present, that the eldest son only, in the case of intestacy, should succeed to the father. The third head of law, or definition of private injuries, and the courses for obtaining redress for them, would not be very difficult of arrangement. The definition of private injuries might be taken in great measure from the English law, but simpler forms of action ought to be provided, and the principles only of pleading should be established, with a positive declaration that the minute technical rules of the English law were not to be binding, though, at the discretion of Judges, they might still be acted upon, like any other rules of right reason, where they might be found to be justly applicable. The settling of the fourth division of law would be easily practicable. Any one intelligent English lawyer, and one of the civil servants employed in the Nizamut Adawlut, with the assistance of the Reports of that Court recently published, might jointly prepare a Regulation in a few months, which would be for all persons throughout India.

# **'SELECT COMMITTEE OF THE HOUSE OF COMMONS. 1807**

India as good a penal code as any now existing in the world. The arrangement of a system of Courts for carrying the code into execution is another matter, and some observations are made upon it in a separate paper.

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by Judges.

(Signed) CHARLES EDWARD GREY.  
EDWARD RYAN.

(Signed) HOLT MACKENZIE,  
Secretary to the Government.

A true copy :

(Enclosure, No. 3.)

## **OUTLINE of a SYSTEM of COURTS for the British Territories in the East-Indies.**

It is with a great distrust of our own competency that we offer any opinions respecting the establishment of Courts of Justice amongst the natives in the provinces. The Governor-General in Council, however, having expressed a wish that we should do so, we will not decline the task. Our suggestions, if inappropriate, will be corrected by those who are more familiarly acquainted with the subject. It would seem to us to be desirable, that a convenient and accurate division should be made of so much of the Indian territories, as may be fitted for a system of regular government, into Presidencies, Provinces, Zillahs and Pergunnahs. This is already done in some sort ; but much convenience would result from a more complete division, and from one intended and calculated to be permanent. There would be a greater facility of inspection and control ; and the channels for the administration of justice being fixed and customary, the flow through them would be easier and more regular, and the people would know better where and how they were to seek for what they wanted. A map of the political divisions of India, existing under the present system, has never been published. Why should it not ? Instead of that surface of huddled names, Hindoo, Mahomedan and British, of which some represent natural divisions of the land, but the greater part political ones which have long been obsolete. In a considerable part of India it would not be difficult to make the complete and perfect division which is here suggested ; it might be worth while that the authorities at home should alter, or empower the Governor-General to alter, in several respects, the boundaries of the existing Presidencies ; a new one perhaps might be created. The Secretaries of the Government could easily make the division of each Presidency into Provinces ; the principal officer of Government in each province could, with somewhat more trouble, make a subdivision of it into a convenient number of Zillahs ; and the Judge of each Zillah might, in several instances, be able to subdivide it into Pergunnahs, defining the boundaries of each division, and making them unalterable, except by a regulation of the Governor-General in Council. Where this could not be immediately done, the existing Courts of Moonsiffs and Aumeens might be continued.

2. Within every one of these divisions (Pergunnahs, Zillahs, Provinces and Presidencies) there might be one Court. The Pergunnah Courts might be under Native Judges. The jurisdiction of these Courts, in cases where compensation in money was sought,

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might be limited to causes in which the matter of dispute should not exceed a certain value, say 1,000 rupees; and in cases respecting lands, to those in which the lands lay entirely within the Pergunnah, and to criminal cases involving no greater punishment than two months' imprisonment. In each Zillah Court there might be three Judges sitting at the same time, but separately, except in cases of appeal, or when any of them should require assistance, when they should sit together. One (or, if necessary, even two) of the three Judges might be natives; and their jurisdiction might extend to all money cases where the matter in dispute should not exceed in value 10,000 rupees; to cases respecting land, in which the lands lay in more than one Pergunnah, but entirely within the Zillah; and to criminal cases not involving the punishment of death or banishment, nor imprisonment for more than one year; but they should have the power of sending any case of difficulty to the Provincial Court for trial in the first instance, or of reserving it until the visit of a Provincial Judge, as hereinafter mentioned. In each Provincial Court there should also be three or more Judges, sitting separately in all cases, except cases of appeal, when they should sit together, and having jurisdiction in all civil cases not triable by the inferior Courts, and in all criminal cases except treason. In each Presidency there might be one Supreme Court of Appeal, having also an original jurisdiction in civil disputes between privileged persons and bodies of the state, and in suits relating to important public charities, or any other matters which have the effect of putting lands in mortmain, and in criminal accusations of treason, or of corruption in the higher officers of the Government. There are some who do not deem it a right principle for the arrangement of a system of Courts of Justice, that an inferior class of Judges should be provided, and less formal proceedings established for the decision of small causes, than for those which involve claims of greater value. A small sum, they say, is of as much moment to a poor man as a large one to a richer, and the poor man has an equal right to a perfect administration of the law; but this can scarcely be adapted to practice, and is, at least, opposed to the established usage of almost all countries in the world in all time. There has hardly ever been any civilized state in which there have not been inferior Courts, and more summary modes of proceeding for the settlement of petty disputes; and if the means by which justice must be administered, and some of the incidents of law, of property, and of crime are considered, reason appears to justify this usual course. For the most part, where the claim is trifling, the circumstances on which it depends are not difficult. A small debt does not usually involve a very long account; a dispute about a cottage does not often depend upon an intricate title; a claim of a hundred pounds rarely makes it necessary to explain the doctrines of trusts and uses. Again, the consequences which are attached to the decision of small claims, do not so urgently require caution and sureness of judgment as actions of greater importance. In most cases it is not of equally evil consequence even to the parties themselves, whatever their circumstances may be, to make a mistaken decision as to fifty pounds as fifty thousand; nor in a sentence of imprisonment for a year, as in a sentence of death. Lastly, the smaller claims are every where by far the most numerous class, and taken altogether would occupy the most time, if they were to be tried with the same formalities as the most important cases. No state can find and pay Judges of the

the highest qualifications in sufficient number for all cases, and yet it is desirable that as many such Judges should be employed as can be found and retained. Surely, it is only plain sense to say, that these shall be employed upon the more difficult and important cases, rather than upon the ordinary and trifling ones. If laws are ever reduced to so much simplicity, that all are equally able to understand them, then all Courts may be similarly constituted; but at present it is desirable to have some of a more powerful constitution than can be imparted to all, for the purpose of dealing with those classes of cases in which the greatest difficulties are to be overcome.

3. There should be only one appeal, demandable of right, for any error in fact. For error in law, whenever law is firmly established, and in all cases where corruption is imputed to the Judge or Court, the appeal ought to go to the Provincial Court at least. But for disputed facts, merely in a suit originally tried in a Pergunnah Court, there should be but an appeal to the Zillah, whose decree in that matter should be final; of a suit originally tried in the Zillah, to the Provincial Court, whose decree should be final; of a suit in the Provincial Court, to the Presidency Court of Appeal; and of the few suits which would be tried originally in the Presidency Court, to the King in Council; but there might be a discretionary power for the King in Council, or the Presidency Court of Appeal, upon special grounds, and more especially that of corruption in any Court or Judge, to call for any case whatever of the highest or the smallest importance, and if necessary, to suspend any decree made in it. In cases of appeal, the Judge, before whom the case should have been tried, should be obliged to state to the Court of Appeal a summary of the whole case, and the grounds of his decision; and the whole of the cases sent from the Provincial Courts to the Presidency Court of Appeal, should be reduced into English. Every Court might have the power of issuing writs of *habeas corpus* within the district through which its jurisdiction extended; and the writ might be demandable as of right in every Pergunnah and Zillah Court, but not in any Superior Court, except when any denial of the writ might have been made by an inferior Court, from which the party had a right to claim it.

4. One Judge of each Zillah might, once in the year, visit every Pergunnah Court of the Zillah; one Judge of each Provincial Court might visit every Zillah Court of the province; and one Judge of the Presidency Court of Appeal, every Provincial Court. The duty of the Judges visiting the subordinate Courts would be to inquire whether there were any complaints of corruption in the Courts, to receive an account of the proceedings of the past year, to inspect and correct the rules of practice and costs, and to try any causes which should have been adjourned until their arrival.

5. The Judges of the Pergunnah Courts might be named by the Zillah Judges annually, or every five years, and if any plan could be arranged for permitting the inhabitants of the Pergunnah to name a list of candidates, from whom one was to be selected, it would be so much the better. The Zillah and Provincial Judges might hold their stations by appointment from the Government of the Presidency, for seven or ten years, subject to removal for assigned grounds of misconduct or incompetence; but, perhaps, it would be desirable that in each Provincial Court there should be a Barrister as Judge or Assessor. The Judges of the Presidency Court of Appeal ought to be appointed by the

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Crown, partly from amongst the Company's civil servants, but some of them ought to be barristers of ten years' standing in England.

6. The Rules as to the districts within which causes, criminal and civil, should be tried, might be that each crime, according to the nature of the offence, must be tried in the Pergunnah Zillah, or Provincial Court of that district, either in which the offence was wholly or partially committed, or in which the criminal was apprehended; every civil suit relating to lands in a district in which the lands are wholly situate; every suit relating to moveables or to contracts in the district within which either the plaintiff or the defendant was domiciled at the time of the cause of action accruing, or of the action being brought.

7. All persons without any other exception than that of the Governor-General, Governors and Councillors, should ultimately be made equally amenable to every Court. The removal of the inconveniences which might at first oppose this, belongs rather to the formation of a general code of law, than to that part of it which would consist of the arrangement of a system of Courts.

8. For every Presidency there should be one principal officer appointed by the Government to see to the execution of the process of the law, and under him there should be officers for each Province, Zillah and Pergunnah, one for each. These officers should enforce and execute without preference and with equal diligence, the process of any Court of Justice whatever, which might come to their hands. They should be a distinct body from the judicial establishment, but amenable both civilly and criminally to all Courts of Justice, as the Sheriffs in England are, for corruption, falsehood or neglect. This system is preferable to that of each Court executing its own decrees, which tends to collision between the officers of different Courts, whereas the Sheriffs ought to be indifferently affected as to all.

9. The question of Trial by Jury, which has been so much discussed, might, perhaps, be provided for at first by having juries of five upon all criminal trials in the Provincial Courts, and full juries of twelve in the Presidency Court in the few cases which would come before it for trial. The Zillah and Pergunnah Courts might adjourn the more important of the criminal cases, brought before them, until the annual visit of a Judge from a superior Court, who might, in such instances, have the power of summoning a jury of five.

10. Instead of having any separate Courts of Equity, it might perhaps be desirable that, in forming a code of law, there should be a specification of certain cases to which all Courts might be at liberty to apply a discretionary modification of the strict rule of law, subject to a report to be made to the Superior Court. Equitable modifications will be found necessary in every system. The great object is to make it manifestly apparent when a decision is made upon the ground of law, or when upon that of equity, in order that the party interested may know how to apply for the correction of any error. When Judges have a general discretion to apply equitable principles in the administration of law, it is pretty nearly the same thing as having no law at all.

11. Jurisdictions, as to wills and testaments, and the administration of the estate of deceased persons, might be given to the Pergunnah, Zillah, or Provincial Court, according



# SELECT COMMITTEE OF THE HOUSE OF COMMONS. 1211

according to the amount of the property and the place where it should be deposited or situated.

(Signed) CHARLES EDWARD GREY.  
EDWARD RYAN.

True copy:

(Signed) HOLT MACKENZIE,  
Secretary to the Government.

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COUNCILS.  
&c.

Papers submitted  
by Judges.

(Enclosure, No. 4.)

LETTER from the Judges of the Supreme Court to the Secretary of the Board of Commissioners for the Affairs of India.

OBSERVATIONS ON VARIOUS QUESTIONS touching the origin and nature of the Authority possessed by the Government and the Supreme Court of Judicature; with Suggestions for the better Administration of Justice, and the adjustment of the numerous points now involved in doubts and difficulties.

SIR:

Court House, Calcutta, September 1830.

We have now the honour of complying, to the best of our abilities, with the request contained in your letter of the 15th of November last.

2. To exhibit distinctly our view of the circumstances in which the Court is placed, it is necessary to go through a statement which we not only fear will be tedious, but of which the substance must be familiar to the President and Board, yet the facts have been regarded in such different lights, that unless we communicate our own impressions of them, the foundations on which our opinions rest will be liable to be misapprehended.

3. The first East-India Company was constituted for the establishing and improving of a difficult and valuable trade, for a limited time, and with a reservation to the Crown of a power to revoke the Charter when the good of the nation might require it.

4. In the reigns of William III. and Queen Anne, the old Company was induced to surrender its Charter, its corporate capacity was terminated, and its members were admitted into another Company which had been constituted not by the Crown alone, but by Act of Parliament, and by Letters Patent of the Crown issued in pursuance of the Act; and a power was reserved of entirely putting an end to the United Company after a certain time, and upon a certain notice, and upon the repayment of a sum advanced by the Company to the Crown.

5. The possessions of the old Company in the East-Indies were transferred for a valuable consideration to the new one; and they were principally the island of Bombay, a town and fortress at Madras, and another at Calcutta. These three places, of which the property was then in the United Company, or those who held under them, were plainly recognized by the Crown in 1726, in Letters Patent of that date, to be British settlements, and within the King's peace and allegiance, and the Company who accepted the Charter must be deemed to have been parties to it.

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6. Bombay had long been severed from the Mogul empire, but Madras and Calcutta probably were considered, even subsequently to this period, by the Indian Princes whose territories surrounded them, as nothing more than factories in which they had given a property to the Company, and allowed them to raise fortifications for their defence in times of disturbance.

7. In 1730 the Company was declared, in explicit terms, by the statute of the 3 Geo. II. c. 14, to be a perpetual corporation, and to be entitled as such to continue to trade in common with other British subjects, if at any time their privilege of an exclusive trade should be terminated. There had been a previous Act in 1710, intended probably to have the same effect, but of which the language was rather obscure and uncertain.

8. The powers of political government which had been given by the British Crown and Parliament, whether to the new Company or the old, down to the year 1757, were calculated mainly and almost entirely for the defence and protection of the three settlements above mentioned, and of the great trade which was carried on for the benefit of the nation.

9. In 1757, however, in the recovery and protection of the settlement at Calcutta, an operation in which the Company were assisted by the King's forces, the abilities of Colonel Clive were so much more than equal to the occasion, that he suddenly found himself the conqueror of the whole of the rich and populous provinces of Bengal, Behar, and Orissa; the capital was in his possession; and the Subahdar or Viceroy, whom he had defeated in battle, was killed by one of his own people. Colonel Clive and Admiral Watson, whilst the contest was going on, had promised a Mahomedan officer of the enemy, that if he assisted them he should be Subahdar; and Colonel Clive accordingly made him assume the title and state of Subahdar of the three provinces, though he had no claim by any appointment of the Mogul Emperor, nor by any hereditary right, but depended entirely upon the support of Colonel Clive, whose act must have required, in this case, to be ratified by the British Crown, before it could be considered as standing in the way of any arrangement which the Crown or Parliament might choose to make respecting the conquest.

10. To pass over intermediate events, the Governor and Council of Fort William, on the part of the East-India Company, in February 1765, made an agreement with the successor of this Subahdar, of which the substance was, that he should have the title and rank of Subahdar, and Nazim of Bengal, Behar and Orissa; but that the Company should nominate a Deputy Subahdar, who should not be removeable without their consent, and who should have the management of all public affairs, including the revenue, and the appointment of officers in that department; but that these should be liable to be removed on the application of the Company. A British person appointed by the Company was to be always resident with the Subahdar, and no European was to be admitted into his service. The Subahdar agreed that the opinion of the Company should be the criterion of what would conduce to his honour and reputation; and the whole military force was put into the hands of the Company, to whom Burdwan, Midnapore and Chittagong, three districts in Bengal, yielding a large revenue, had been some time before assigned for the purpose of their maintaining an army.

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11. At a later period of the same year, 1765, the Company obtained from the Mogul Emperor, after the battle of Buxar, a firman, which purported to be a grant in perpetuity of the whole revenues of Bengal, Behar and Orissa, upon condition of their providing for the expenses of the Nizamut, and paying to the Emperor annually twenty-six lacs of rupees.

12. In this manner, within a short time, and before the close of the year 1765, the Company had taken into their hands all the means and forces of Government throughout Bengal, Behar and Orissa; and as a perpetual right to collect the land revenues necessarily implied the right of entering and measuring the lands, and of ejecting the tenants upon failure of payment, it was absolutely incompatible with any adverse possession in other hands of the dominion of the country. There were then but three modes in which it seems to have been possible to contend that the Company had the right to keep the powers they had obtained. First, as filling under the Mogul Emperor the offices of perpetual Dewan and commander of the army in these provinces, and as holding in perpetuity the three districts of Burdwan, Midnapore and Chittagong, with all such rights annexed as the Subahdar had formerly enjoyed; secondly, as having become, in fact, themselves the sovereigns of Bengal, Behar and Orissa; or thirdly, that, as British subjects, they had obtained them by conquest and treaty, in trust for the British Crown. It would not have been reasonable that a Company which had been created by the British Parliament, and was composed for the most part of natural-born British subjects, to whom the temporary privilege had been given of excluding all other British subjects from the sea-coasts of more than half the globe, should have seized the opportunity afforded by these privileges, to secure to themselves a power either as independent potentates, or as servants of a foreign prince, which might be turned to the injury of the country to which they owed their political existence: accordingly, the British Parliament, by the Act of the 13 Geo. III. c. 63, seems to have decided that the last of the three forms stated above was the only one in which the Company could be permitted to hold what they had so unexpectedly acquired; and as the circumstances were such as had not been at all contemplated when their Charter for trade was granted under the statute of the 9 William III., and as those circumstances might vitally affect the interests and constitution of Great Britain, provisions entirely new and different were justified and required by the occasion.

13. One difficulty was felt which would not perhaps at the present day have been thought so considerable. It was imagined that the land revenues, after defraying the expenses of Government, would still yield a large surplus, and this the Company claimed as their lawful profit, and that they had a property in the revenues. On the other hand, it was contended, and indeed it was resolved by the House of Commons, that the revenues belonged to the State. The dispute ended in a provision which has been renewed and still subsists, that the revenues and territorial acquisitions should remain for a limited period in the possession of the Company, without prejudice to the claim of the nation: and the matter is now of less consequence than it was formerly, since the expenses of Government, to which the land revenues are specifically appropriated by Act of Parliament, are such as to make it unlikely there will be any great surplus, unless

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taxes should be imposed to a considerable extent ; and even in the event of a surplus, the respective shares of the Company and the Public are ascertained by the statute.

14. To a certain extent the statute of the 13 Geo. III. c. 63, seems to be clear and decisive. It put an end to all question as to the dependence of the Company on the Parliament, and as to the absolute right of the British Legislature to regulate and direct the whole powers of political government which the Company might then have or thereafter acquire. The Parliament itself nominated in the statute the five persons who, for the next five years, were to be the Governor and Council in Bengal, and who were not to be removeable by the Company ; reserving to the Company the power of appointing subordinate agents for the management of their commercial affairs ; and although the Governor and Council were subjected to the lawful orders of the Court of Directors, the Directors were placed, as to matters of government, under the superintendence of the High Treasurer or Commissioners of the Treasury, and one of the Secretaries of State. Since that period the trade and property of the Company have been in law, according to statutory enactment, a distinct and separate thing from their powers of political government, but unfortunately not so distinct that they have not continued to be entangled at several points, and frequently confounded ; and although the Company's powers of government, whatever they were, were at this time entirely subjected to the British Crown and Parliament, it was not made quite so plain and certain how far and in what manner, it was intended to assert the sovereignty of the Crown and the authority of Parliament over the provinces in which these powers were to be exercised, and especially to what extent it was intended that the powers of legislating and administering justice, which had existed under the former governments of the country, should survive the change which had taken place. The title of the Act implied only the establishment of dominion and law over the whole of a newly acquired territory and its inhabitants ; there was no formal declaration in it even of the sovereignty of the Crown ; the Settlement at Fort William, and the factories and places subordinate thereto, were mentioned distinctly from the provinces at large ; and there were many expressions and provisions whence it might be inferred that the inhabitants of the provinces were not considered as having become British subjects, which would have been the legal consequence of the provinces having become British territory. But on the other hand, the whole civil and military powers of Government, throughout the provinces, had for some time been in the hands of the Company, and the Governors newly nominated and appointed by Parliament, were directed to exercise the same, including the ordering and management of the revenue, which, as we have stated, was absolutely inconsistent with the dominion of the country being in any adverse possession ; and there is no supposition on which it can be conceived to have been intended by the British Parliament, that British persons, appointed by the King in Parliament to exercise all the powers of government, should exercise them in any subordination, either formal or substantial, to any other Crown than that of Great Britain itself. Since that period neither the Mogul Emperor nor the titular Subahdar and Nazim, have ever been permitted to do any important act of authority within Bengal, Behar or Orissa. In the course of the debates which preceded the statute, the House of Commons had resolved, with reference to the revenues and territorial acquisitions, that

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"all acquisitions made by treaty with foreign princes did of right belong to the State;" and by the statute they were declared to be left in the possession of a British Company, by the permission and will of the British Parliament. By the Charter of Justice, which was granted under the Great Seal in the next year, 1774, writs in the King's name were directed to be issued into every part of the provinces of Bengal, Behar and Orissa; and it has never, from that time until this, been disputed that these writs, against certain classes of persons at least, have always been legal, and of as full force and effect on the outer borders of the provinces, as in the town of Calcutta, or as in England itself. The writers too, who have been the best qualified to pronounce an opinion upon this subject, and amongst the rest Mr. Harrington, a chief judge of the Sudder Adawlut, who wrote and published, with the sanction of the Court of Directors, an Analysis of the Laws and Regulations of Bengal, have always dated from this statute, or from the earlier era of Clive's conquest, that sovereignty of the British Crown over Bengal, Behar and Orissa, of the present existence of which, throughout the British possessions in India, there cannot be any question.

15. Perhaps in these circumstances, the most consistent and tenable ground on which the enactments of the statute of the 13 Geo. III. c. 63, can be placed, is the supposition of the sovereignty of the British Crown, and the authority of Parliament having been fully established by it, or by what had previously taken place, but that it was not intended to abrogate the previously existing laws of the new territories further than was expressly declared, nor all at once to abolish or preclude the powers of legislating, and of administering justice, which the Company had obtained from the former Governments, but only to subject these to the control and regulation, and to the will of the Crown and Parliament; at the same time that means were afforded to the Indian Government of bringing the whole territories gradually into a subordination to the settlement at Fort William, and of making regulations by which, under the control of a Supreme Court of Justice, one uniform system of law and government, not repugnant to the laws of England, might ultimately be established. To leave, for a time, to the old forms of Government a distinct existence, was not only the course which the difficulties of the case seemed to point out, but it was perhaps, in some degree, required by good faith, and was recommended by considerations of humanity. It seemed to be implied, in the grant by which the Dewanny had been given up, and in the agreements which the Company had made with the Subahdars whom they had set over the provinces, that, for a time at least, the Nizamut or Mahomedan Government of the provinces should be maintained. The Crown and Parliament, though they had been no parties to these agreements, had not cancelled them, and were certainly bound, in justice, if they took any benefit from them, to observe the conditions which might be annexed; and although the obvious intention of those who were parties to the grant of the Dewanny, and the plain meaning of the words, were only that the Mogul Emperor should not be called upon for any of the expenses of the Nizamut, it might be contended that the use of the term, "Nizamut," which was a well-known office, including the whole government, excepting the collection of the revenue and its necessary incidents, implied some retention of its Mahomedan form and character; and under the existing arrangements with the titular Subahdars, there was a system of Mahomedan government in action in the provinces, at

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the head of which was placed a native nominated by the Company as Naib Subahdar, or Deputy Subahdar. Upon the supposition that the statute established the sovereignty of the British Crown over the provinces, it would have followed, but for these considerations, that the existing inhabitants would have become, not naturalized indeed, but still British subjects, though with the liberty perhaps of removing themselves and their property. Lord Mansfield's declaration of the law on this point, in the case of *Campbell* against *Hall*, in the very year in which the Charter of Justice was granted, must be held to be conclusive, and to have expunged the barbarous tenet of some lawyers of a former time, that a people, uninstructed in the Christian religion could neither claim protection as their right, nor owe allegiance as a duty to the British Crown. But if the Act and Charter passed upon the supposition of the Nizamut and Dewanny being maintained in their Mahomedan form, except where Parliament had expressly altered them, or might afterwards interfere to do so, those who at the time were living under the Mahomedan form of government in the provinces might be considered as entitled, notwithstanding the territory had become British dominion, to stand in something like the same relation to the British Crown as the European inhabitants of factories had been permitted to maintain with the Mogul sovereigns and other Indian princes; a relation which preserved to them their characters and rights respectively of British, French, or Dutch subjects, though inhabiting the territories of a foreign sovereign. It was no longer indeed, as it seems to us, possible to contend that the natives born subsequently within the provinces would not be subjects of Great Britain, but they might perhaps be considered to be so by reason of their being subjects of an Indian realm which had become a dependency of the British Crown and Parliament, but which still retained, by permission of Parliament, some distinct powers of legislation and of administering justice, as portions unabrogated of their former laws. It was the more reasonable to lean to this interpretation, because the Mahomedan and Hindu inhabitants of those provinces, like the clients under the Roman law, or the vassals of the feudal system, and indeed the common people under every other state of government in which numerous chieftains or heads of political or religious classes exist, had been accustomed to think more of their fealty to the immediate chief upon whose land, or under whose protection or patronage they lived, than of the allegiance due to a common and supreme sovereign. The country was in a state in which the people ranged themselves under different flags, rather than according to boundaries of territory. The Hindus and Mahomedans could not suddenly and all at once have been brought under an entirely new, and fundamentally different, system of laws, without the most extreme difficulty and inconvenience; and as to the Mahomedans, there was the further consideration that their Koran enjoined obedience to those rulers only who protected their religion. No lasting inconvenience was necessarily connected with this view of the case. Treaties among Indian princes had been for the most part considered by themselves, unless there was some special provision in them, as binding only during the lives of those by whom they were made. Subsequent experience has shown that the expounders of the Koran find no difficulty in reconciling the allegiance of Mahomedans with that degree of toleration and protection of their religious usages which the British Parliament has felt no difficulty in sanctioning; and the Parliament is supposed to have always had the power and right, whenever it might choose to interfere,

interfere, of modifying and altering those remnants of Mahomedan government which it permitted to exist in a distinct state. Thus the subsequent existence of the Nizamut is reconciled with the statute of the 13 Geo. III. c. 63, but is not supposed to have been left upon so stable a foundation as to have prevented it from being moulded into a more British form when those were dead who had any personal claims to insist on its continuance, and when the next generation of natives, without any abrupt offence to their prejudices and habits, might be brought more immediately under the influence of British institutions. The exercise also of certain powers by the British Governments in India is explained, which cannot, strictly speaking, be shown to be derived from Parliament, though subsisting only by its permission, and to be exercised in subordination to its authority and will.

16. The first establishment of the Supreme Court of Judicature at Fort William was directed by the statute on which these observations have been made. The object in making them has been to explain the powers and jurisdiction which were given to the Court, and to show, at the same time, how imperfectly defined were the foundations on which it was placed, and by how many obscure difficulties it was surrounded. For these purposes there are still some other facts which it is necessary to revive and bear in mind. The first East-India Company had very early been empowered to establish Courts, and in many cases to put in force, within their settlements and factories, the English laws; and similar power was given to the new Company by the Charter of the 10th of William III.; but in 1726 these Courts had been superseded, and there had been established at each of the settlements of Madras, Bombay, and Calcutta, by Royal Charter, a Court, consisting of a Mayor and Aldermen, for the trial of civil actions, and a Court of Oyer and Terminer, consisting of the Governor and Council, for the trial of criminal offences, and the Governor and Council were also constituted Justices of the Peace, and had continued to be so from that time. The Charter was surrendered, and a new one granted in 1753, with some alterations, but not such as to change materially the structure of the Courts as stated above. These Courts at Calcutta were acknowledged by all persons, after the conquests of Clive, to be no longer sufficient for the administration of justice. Besides their powers of political government, and their rights connected with the general revenue, under the grant of the Dewanny, the Company claimed the three districts of Burdwan, Midnapore and Chittagong, as entirely belonging to them, and the property also of a large zemindarry lying to the south, but beyond the boundaries of Calcutta, and they had enjoyed for themselves and their servants the privilege of trading free of duty throughout the provinces. There had been numerous factories and smaller stations, called aurungs, in different parts of the provinces, where their agents and servants, and makers of salt, and weavers, and other persons employed by them, or living under their protection, were collected, and where the upper agents traversed the country in all directions; some of them were guilty of many violent and oppressive acts, and a state of the greatest disorder had ensued. It was expressly with a reference to these circumstances, to the insufficiency of the former Courts, and for a remedy of these evils, that the new Court was directed to be established; and the statute fixed the outline of its powers and authority, which were to be more distinctly and specifically developed in a Charter to be granted by the Crown, in pursuance of the statute.

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17. The statute provided that the Court should exercise all civil, criminal, admiralty and ecclesiastical jurisdiction; and that it should be a Court of Oyer and Terminer and Gaol Delivery, for the town of Calcutta and factory of Fort William in Bengal, and the limits thereof, and the factories subordinate thereto; and that the Charter to be granted by the Crown, and the jurisdiction and powers to be thereby established, should extend to all British subjects who should reside in Bengal, Behar and Orissa, or any of them, under the protection of the Company; and that the Court should have full power to hear and determine all complaints against any of his Majesty's subjects for any crimes, misdemeanors or oppressions, and to hear and determine any suits or actions against any of his Majesty's subjects in Bengal, Behar and Orissa; and any suit, action or complaint against any person who at the time of the cause of action arising should be employed by or in the service of the Company, or of any of his Majesty's subjects; and should hear and determine any suits and actions of any of his Majesty's subjects against any inhabitant of India, residing in Bengal, Behar and Orissa, upon any agreement in writing where the cause of action should exceed 500 rupees, and where it should be agreed that in case of dispute the matter should be determined in the Supreme Court; and that such suits or actions might be brought in the first instance before the Court, or by appeal from the sentence of any of the Courts established in the provinces: That the Governor-General in Council, and the Chief Justice and other Judges of the Supreme Court, should have full power and authority to act as Justices of the Peace for the settlement at Fort William, and the several settlements and factories subordinate thereto, and to do all things to the office of a Justice of the Peace appertaining; and for that purpose the Governor and Council were authorized and empowered to hold quarter sessions at Fort William four times in the year: That in cases of indictment or information laid or exhibited in the Court of King's Bench in England, for misdemeanors or offences committed by Governors, Counsellors or Judges in India, the Court of King's Bench might award a mandamus to the Supreme Court, requiring it to examine witnesses and to receive proofs, and to issue such summons or other process as might be requisite for the attendance of witnesses; and in case of any proceedings in Parliament touching any offences committed in India, that it shall be lawful for the Lord Chancellor and Speakers of the two Houses to issue their warrants to the Governor-General and Council, and the Judges of the Supreme Court, as the case might require, for the examination of witnesses, and such examinations, duly returned, should be good and competent evidence. A like power of directing to the Supreme Court writs of mandamus or commissions to take evidence, was given to all the King's Courts at Westminster, in actions or suits of which the causes should have arisen in India; but an exception was made that depositions taken in this manner should not be evidence in capital cases, unless in Parliament.

18. In stating the fuller and more express ordinances of the Charter by which in the following year the Court was established, it may be as well, for the sake of brevity, to pass over the authority of the Court as a Court of Equity, of Admiralty, and an Ecclesiastical Court, and to describe only its other powers and jurisdictions; namely, first, an authority similar to that which the Justices of the King's Bench have in England by the common law, and to be exercised especially for the conservation of the peace; secondly, the hearing and determining of pleas in civil actions; thirdly, its jurisdiction as a Court



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of Oyer and Terminer and Gaol Delivery; and fourthly, powers to be exercised in assistance of proceedings, criminal or civil, instituted in Parliament or in the superior Courts in England, for causes of action or offences in India: and it ought to be borne in mind that whatever reason there may be to suppose that the statute of the 13th Geo. III. c. 63, was somewhat imperfectly worded, by reason of its being the production, not of calm leisure and clear views, but of a struggle of parties after the attention of all had been exhausted, and their conceptions disturbed, by the disputes of several successive sessions, there is no ground for thinking that the Charter itself, though its form must have depended in a great measure upon the statute, was drawn up otherwise than with great care. The case of *Campbell* against *Hall*, which was heard and decided in that very year, shows how much the minds of some of the principal lawyers of the time, and especially Lord Mansfield, had been engaged in those great questions which the Charter involved; and it is known that it was subjected to the inspection of Lord Thurlow, Lord Loughborough, Lord Bathurst, and Lord Walsingham, and received their corrections and amendments.

19. Justices of the Peace had been established at Madras, Bombay, and Calcutta, since 1726; and the statute of the 13th Geo. III. c. 63, enacted that the Governor-General and Council and the Judges of the Supreme Court should be Justices of the Peace for the settlement of Fort William, and the settlements and factories subordinate thereto, and the Governor-General and Council were directed to hold quarter sessions at Fort William. By the Charter which followed the statute, the Court of Quarter Sessions and the Justices were made subject to the control of the Court, for any thing done by them while sitting as a Court of Quarter Sessions or in their capacity as Justices, in the same manner and form as the inferior Courts and Magistrates in England are by law subject to the order and control of the Court of King's Bench; and the Supreme Court was empowered to issue to them writs of mandamus, certiorari, procedendo, error. By the fourth clause of the same Charter it was ordained, that the Judges of the Supreme Court should respectively be Justices and Conservators of the Peace, and Coroners, within and throughout the provinces, districts, and countries of Bengal, Behar and Orissa, and every part thereof, and should have such jurisdiction and authority as Justices of the Court of King's Bench have within England, by the common law thereof. It has not, as far we are aware, been questioned that under these provisions there was given to the Supreme Court the same power and control over the Court of Quarter Sessions, and over any of the individuals, amongst whom was each of the Judges themselves, who were constituted Justices of the Peace, as the Court of King's Bench has over Justices of the Peace in England; nor can it reasonably be contended that the authority of the Judges in this respect was limited to the settlement at Fort William, and the factories and places which had been subordinate to the settlement before Clive's conquest. For the first, not only were the powers given in the fourth clause of the Charter expressed to be such as the Justices of the King's Bench had by common law, which not being those of local Conservators of the Peace merely, nor such only as were possessed by the other Judges, are known to have extended wherever the King's peace was to be preserved; but those who framed that clause of the Charter, as if to prevent the possibility of doubt, took care to employ the words, "throughout the provinces and every part thereof:" words which, except

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except by a counsel in support of his case, can never be supposed to have been heedlessly used, or to have been meant, when sanctioned by the great seal, to be treated as an empty form by the Judges, to whom the Charter was given as the text of their duties. Secondly, the principal motive which led to the establishment of the Court was a desire to prevent the violence and oppressions of which British persons and other agents of the Company were guilty in the provinces, and for the correction of which the former Courts were declared insufficient. This could not have been done by the Court if the Judges were to have power as Conservators of the Peace only at Fort William or in the scattered factories, and to be powerless in the interjacent spaces; whilst British persons, who were acknowledged to be independent of the Nizamut and Mahomedan laws, might range the provinces at large. If a murder was committed or false imprisonment made in the provinces, by a person amenable only to the Supreme Court, it was necessary that the Judges, as Coroners and Conservators of the Peace, should have a right of instant investigation, and of affording immediate relief. Their powers could not have been adapted to the increase of territorial acquisitions, or in any way more effectual than those of the former Justices of the Peace, if they had been confined within the same bounds. Thirdly, it never has been contended that writs of habeas corpus to release from wrongful imprisonment may not be issued, or that they have not been lawfully issued, to British persons in the provinces; and we apprehend that it is upon the fourth clause of the Charter that the power of issuing any writ of habeas corpus at all will be found to rest; and that, in this respect at least, that clause is something more than idle words, and that the powers of the Judges given to them by it are not merely those of ordinary Justices, but such as belonged to the Justices of the King's Bench by the common law. Fourthly, it was in no way consistent with the supposition even of the provinces being a distinct and subordinate realm, that the King should appoint Conservators of the Peace there with the fullest power. It never has been questioned that the process of the Court, as a Court of Civil Pleas and a Court of Oyer and Terminer, was intended, as against British persons at least, to run through every part of the provinces; and for the purpose of enforcing the attendance of witnesses, this has not been restricted to British persons, but is compulsory on the native inhabitants as well as others. This being the case, it would have been difficult to find any good reason for confining to narrower local bounds the power given to the Judges for the conservation of the peace; nor has there ever been any way in which the process of the Court, in any of its several capacities, could be effectually enforced or supported, unless by a co-extensive power of preventing a riotous resistance of it. Lastly, this point seems to be placed beyond doubt by the 33 Geo. III. c. 52, s. 151, in which it is declared that the Governor-General and Council, and the Judges of the Supreme Court, had heretofore been authorised by law to act as Justices of the Peace within and throughout the provinces, districts and countries of Bengal, Behar and Orissa; and since that statute, under commissions authorised by warrant of the Governor-General, but issued by the Supreme Court, and sealed with the seal thereof, there have been Justices of the Peace resident in all parts of the provinces, who are acknowledged to be subject to the control of the Supreme Court. Supposing it then to be beyond dispute that the powers given to the Court in 1774, by the fourth clause of the Charter, were not limited to the settlement at Fort William and the subordinate factories,

factories, but extended throughout the provinces, the reasons for thinking that the native inhabitants were not exempted from them are, first, that in that passage of the Charter no such exemption is made; secondly, that the nature of the power and the objects of it are absolutely incompatible with any exemption of particular classes of persons. No Conservator of the Peace, at any time or in any place, no Justice of the Peace at present in the provinces, could make any distinction of persons in the discharge of his peculiar duties. If any affray or riot takes place, especially in the night-time, it is impossible that there can be any selection of the rioters. If one of the Council, or a Judge of the Court, in 1775, or at any time previous to 1793, when they were the only Justices of the Peace, should have been resisted, and himself or his assistants imprisoned or maltreated by natives, when he was discharging his duty as a Justice of the Peace in the provinces, even though the primary cause of his being called upon to act might have been a breach of the peace by a British person, it could not have been maintained that the Court had no power to protect him, or release him from imprisonment; and there seems to be equal reason that the same power should now exist for the support and protection of those who act under the commission of the peace which is issued by the Court. If a criminal in the provinces, amenable to the British law and the Supreme Court, and to no other tribunal, be harboured and abetted by natives, surely they are not to set at defiance the Justice of the Peace who is to apprehend him, and the Supreme Court to whom the Justice is answerable. We are aware of its having been said that the Charter exceeded in some particulars, and went beyond the words of the statute. We do not admit this to have been the case, but consider, on the contrary, that the directions of the statute, that the Court should exercise all criminal jurisdiction, and that the jurisdiction should extend to all the King's subjects who should reside in the provinces, implied and made it absolutely necessary that there should be a power similar to that of the Justices of the King's Bench, extending throughout the provinces; but even if this necessity had not been created by the statute, the Charter, for every purpose that was within the King's prerogative, and which was not prohibited in express terms by the statute, would not have been the less valid and effectual. Supposing the provinces to have become British dominions, then, whether the statute sufficiently declared that the Judges of the Supreme Court were to be Conservators of the Peace in the provinces, or not, it is certain that it did not constitute any other persons so as to preclude the Crown from exercising its prerogative of entrusting that duty to the Judges. The will and intention of the Crown upon this point was declared in very plain words in the fourth clause of the Charter; and the power there given (whether it was meant that there was to be any concurrent power or not surviving out of the old Mahomedan Government) was indicated, both by the words and by the nature and subject of the power, to be one which was to operate upon all within its sphere, without distinction of persons.

20. A second branch of authority and jurisdiction given by the Charter was that of hearing and determining all pleas, real, personal, or mixed, respecting things real or personal in Bengal, Behar or Orissa, and all pleas of which the cause should accrue against the East-India Company, or any of the King's subjects who should be resident within Bengal, Behar or Orissa, and against any other person who at the time of action brought, or cause of action accruing, should be directly or indirectly employed by or in the service

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of the Company, or any other subject of the King; and in cases in which the cause of action should exceed 500 rupees, against every other person whatsoever, inhabitant of India, and residing in Bengal, Behar or Orissa, who should agree in writing that in case of dispute the matter should be determined in the Supreme Court; and that in such cases it was provided, that if the suit should be brought in any of the Courts of Justice already established in the provinces, either party might appeal to the Supreme Court, which might by writ command the parties to surcease proceedings in the Provincial Court, and take upon itself the determination of the suit.

21. A third branch of jurisdiction was that of a Court of Oyer and Terminer for the town of Calcutta and factory of Fort William, and the factories subordinate thereto; and the Charter empowered the Court to try all crimes and misdemeanors committed within the town or factory, and the other factories, and to inquire, hear and determine, and award judgment and execution of, upon and against all treasons, murders, crimes, misdemeanors and oppressions committed in the provinces or countries called Bengal, Behar and Orissa, by any of the subjects of his Majesty, or any person employed by or in the service of the Company, or of any subject of his Majesty; and for this purpose to award and issue writs to the Sheriff to arrest and seize the bodies of such offenders, and to do all other necessary acts.

22. If these parts of the Charter, without a reference to those treaties or agreements which we have before noticed, had been strictly insisted upon and rigidly enforced, it seems to us that it might have been very difficult to maintain in law, that subsequently to the 13 Geo. III. c. 63, and supposing the provinces to have become in any manner dominions of the King, there could be any person domiciled within them, unless it might be the inhabitants of the European factories, who were not to be considered, for the time at least, subjects of his Majesty, and consequently, according to the words of the Charter, amenable to the Supreme Court, both in civil and criminal suits; but by an indulgent construction of the Act and Charter, in conjunction with the agreements which had been made by the Company with the native Princes, and by supposing that such parts and powers of the old Governments still subsisted as were not expressly superseded by the Statute or Charter, those who could be considered as living under the protection of the Nizamut or Mahomedan system of law and government over which the Naib Subah had presided, seem from the first to have been held, upon the grounds which have been already stated, to be exempted from the jurisdiction of the Supreme Court as a Court of Pleas and Court of Oyer and Terminer; but even these were held liable to be summoned and compelled to attend the Court as witnesses, and without such liability the Court would have been unable to perform many of the important functions expressly and unambiguously assigned to it by the Crown and the Legislature.

23. These complicated circumstances, of which we have endeavoured to present an accurate statement, could not subsist for any length of time in the indistinct form in which they were left, without disturbance. Those disputes and disgraceful contests, between the Governor and Council on the one side, and the Judges on the other, ensued, on which we wish to make only one observation, namely, that an impression has been created that the Judges greatly exceeded their authority as defined in the Act and Charter, but that we believe it will be found on examination that this was not the case, nor considered by the

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the Parliament to be so; and the Act of the 21 Geo. III. c. 70, in which it was found necessary to provide an indemnity for the unlawful resistance of the Court by the Governor and Council, and the Advocate-General, made no similar provision for the Judges. The misfortune appears to have been, that the Legislature had passed the Act of the 13 Geo. III. c. 68, without fully investigating what it was that they were legislating about; and if the Act did not say more than was meant, it seems at least to have said more than was well understood.

24. Some important enactments were accordingly made by the statute of the 21 Geo. III. c. 70, as to the powers and jurisdiction to be exercised by the Court in future. First, that the Court should not have any jurisdiction in any matter concerning the revenue, or acts done in the collection thereof, according to the usage of the country, or the regulations of the Governor-General and Council; and it was expressly declared to be expedient that the inhabitants of the provinces should be maintained and protected in the enjoyment of all their ancient laws, usages, rights and privileges; the Governor-General and Council were declared to be a Court of Record, which might lawfully hold all appeals from the Country or Provincial Courts in civil causes, with a further appeal to his Majesty in Council, in suits of which the value should be £5,000 and upwards; that the same Court of the Governor-General and Council should hear and determine all offences, abuses and extortions in the collections of the revenue, and punish the same at discretion; provided that the punishment did not extend to death, maiming, or perpetual imprisonment; and that the Governor-General and Council should have power to frame regulations for the Provincial Courts, which his Majesty and Council might disallow or amend; that no person should be subject to the jurisdiction of the Supreme Court by reason merely of his holding land, or collecting the revenue from lands held by him or under him, nor in any matter of inheritance or succession to land or goods, or ordinary matter of dealing or contract, by reason of his being in the service of the Company or the Government, or of any native or descendant of a native of Great Britain, but only in actions for wrongs, or upon special agreement in writing to submit the decision to the Supreme Court. The Governor-General and Council were exempted from the jurisdiction of the Court for any act or order done or made by them in their public capacity, unless it should extend to any British subject, in which case the jurisdiction of the Court was retained; the Governor and Council in other cases continuing to be responsible to Courts in England; and provisions were made for the parties obtaining, through the Supreme Court, copies of any orders complained of, and also having the evidence in India taken by the Supreme Court. Provincial Magistrates, as well natives as British subjects, exercising judicial offices in the Country Courts, were exempted from actions in the Supreme Court for wrong or injury, for any judgment, decree or order of their Courts, and the like exemption was extended to all persons acting under such orders; and in case of an intention to bring any information in the Supreme Court against any such officer or magistrate for any corrupt act, a certain notice was directed to be given before the party could be arrested or other proceedings could be taken against him. There was a proviso in the Act, that the Supreme Court should have full power and authority to hear and determine all and all manner of actions and suits against all the inhabitants of Calcutta, but that the inheritance and succession to lands and goods, and

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all contracts, should be determined by Mahomedan or Hindoo law respectively, where the defendant was a Mahomedan or Hindoo; that the rights of fathers and masters of families should be preserved; that nothing done according to the law of caste within the family should be deemed a crime; and that the process of the Court should be accommodated to the religion and manners of the natives.

25. It is deserving of remark, that in this statute, although the existence of the Provincial Courts for the determination of civil causes is noticed, and the Governor-General and Council are empowered to correct abuses in the collection of the revenue, by any punishments short of death, maiming or perpetual imprisonment, there is no Provincial or Country Court of Criminal Justice mentioned; and up to the time at least of that statute, the Supreme Court, as a Court of Oyer and Terminer, and the Court of Quarter Sessions, are the only ones recognized by statute as capable, in the Presidency of Fort William, of hearing and determining charges of crimes and misdemeanors against the law, other than abuses in the collection of the revenue. In fact, the present Nizamut Adawlut, and the whole system of Criminal Courts subordinate to it, have not been established by a power created by the Crown or Parliament; they are referred to in the last statute by which the Government of India was renewed, namely, the 53 Geo. III. c. 155, but they were established by regulations of the Governor-General in Council in 1793, in lieu of the Mahomedan Criminal Courts, over which the Naib Subah had presided; and they are a continuance of those Courts in a regulated form, not a new creation. In 1793, there had not been any power created by the Crown or Parliament, under which, except for revenue offences, the Indian Governments could establish Criminal Courts, subsequent to the Charter of the 10 William III.; and the powers of establishing Courts, given in that Charter, seem to have been entirely superseded by the Charters of 1726 and 1753.

26. Since the Act of the 21 Geo. III. c. 70, the jurisdiction which the Court possessed in Bengal, Behar and Orissa, has been extended over all the vast territories which are now under the Presidency of Fort William; and there have been several enactments affecting the Court in various ways, but it is not necessary to state them *seriatim*. The foundations of its jurisdiction have been shown, and it appears to us, first, that the Court has now the superintendence and control of the Commission of the Peace throughout every part of the provinces of the Presidency of Fort William, in the same way as the Court of King's Bench has it in England: that the power of Justices of the Peace is one which, for the most part, must of necessity be exercised without discrimination of persons, and that the superintending power of the Court is of a corresponding character: that as a branch of the power given to it by the fourth clause of the Charter, for the conservation of the peace, and for the kindred object of relief against oppressions which are immediately consequent upon breaches of the peace, the Court possesses and exercises the power of issuing writs of *habeas corpus*, to relieve from false imprisonment; that this power is not locally limited to the town of Calcutta, but is co-extensive with the superintending powers of the Judges, as supreme conservators of the peace; and that, inasmuch as British persons at least, and natives employed by the Company or the Government, or any other British persons, are liable to be sued in the Supreme Court for trespasses, or indicted for offences committed in the provinces, and that, for any corrupt

corrupt act, an information will lie against a judicial officer, whether native or European, there is no ground for saying that a writ of *habeas corpus* may not be directed to any of these, if the act complained of should include a continuing and subsisting false imprisonment. With respect also to the natives generally who reside in the provinces, under the Mahomedan law and the regulations of Government, it would be uncandid if we were not to admit, that before we saw the decision of the Privy Council upon the petition of Sir John Grant, we should have said, upon a mere question of legal construction, that the Court had a right to direct a writ of *habeas corpus ad subjiciendum* to a native for the purpose of relieving another native from false imprisonment, because we look upon this writ as a branch of the powers given by the fourth clause of the Charter; principally and especially for the conservation of the peace, and other objects closely connected with it; and conceiving that those powers must generally extend in law to all classes of persons, where they operate at all, we should have been at a loss to find any legal ground for restricting the use of that particular writ in a different way from the exercise of the other powers derived from the same clause and sentences of the Charter. At the same time we would wish it to be understood, that in such a case the statute of Charles the Second would be compulsory upon us, but that the application must be made under the fourth clause of the Charter, and upon the ground of our having a similar power to that which the Justices of the King's Bench have at common law; and as we should always have thought that in these circumstances we should have had to exercise some discretion, we do not conceive that we should have issued the writ upon the complaint of a native, against a native resident in the provinces, where there was any other lawful power competent and willing to afford more convenient relief. The decision of the Privy Council we receive with the utmost deference, and we are bound by law, and feel every inclination, to regulate our proceedings by it; but it is only the more necessary on this account, at a time when we understand that an Act is about to pass declaratory of the jurisdiction of the Court, that we should point out some questions of difficulty which might arise upon that decision. If a British person, especially a Justice of the Peace, or his assistants, should be opposed, and any of them should suffer false imprisonment from a native in the provinces, is the Court without power to relieve them, when if the party, being a British subject, should apply to the Government, and the Governor-General in Council should make any order in support of the native complained of, those at least who should act under the order would be liable to the jurisdiction of the Supreme Court, by the express reservation in the 21 Geo. III. c. 70, s. 3? The jurisdiction of the Court as a Court of Civil Pleas, since the statute of the 21 Geo. III. c. 70, extends, first to the hearing and determining of all manner of actions against the inhabitants of Calcutta; and on account chiefly of the innumerable difficulties which British persons would have to encounter in pursuing their claims in the Country Courts, this term "inhabitants" has been always understood to have been intended by the Parliament to comprise all who have dwelling-houses and carry on trade in Calcutta. Secondly, the Court has jurisdiction over all actions of a transitory nature, and all of a local nature, of which the cause arises in Bengal, Behar or Orissa, against any subject of the King residing in Bengal, Behar or Orissa, at the time of the cause of action accruing or action brought; or any person residing there, who shall have agreed in writing to submit the matter, in case of dispute,

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dispute, to the Supreme Court, and without any agreement, against any person in the service of the Company or of a British subject, for any wrong or injury; but the whole of this jurisdiction is subjected to the exception, that the Court is not to interfere in any matter arising out of the collection of the revenue; and the term "subjects of the King" is certainly now to be construed with a reference to the considerations before mentioned, and to the provisions in the statute of 21 Geo. III. c. 70, by which it was declared that the Mahomedans and Hindoos, in the provinces were to have their own laws, and that there were Courts for the administration of them in civil cases, from which the appeal lay to the Governor-General in Council. The jurisdiction of the Supreme Court, as a Court of Oyer and Terminer, is established, first, throughout certain places within which it operates without any distinction of person. In practice, these have for many years been considered to be contracted to the limits merely of the town of Calcutta; originally they comprised, according to the words of the statutes and charters, at least a surrounding district and all the outlying factories; and it is not free from uncertainty what they legally are now. Chinsurah in Bengal, and Penang, Singapore and Malacca, stand, in this respect, in a very singular predicament at present, which will be easily understood by a reference to the statutes which provided for the Dutch possessions that were ceded in 1824 being transferred to the Company, and when the fact is adverted to, that the Presidency of Prince of Wales' Island has been recently abolished by the Directors, and that the places of which it consisted have been made dependences of Bengal; but that there is still a Charter of Justice for the Presidency uncanceled, but under which there is nobody in India now who is authorized to act. Secondly, the Court of Oyer and Terminer has a power of trying all offences committed by his Majesty's subjects, or any person employed by them, within the Presidency, or by any of his Majesty's subjects any where between the Cape of Good Hope and the Straits of Magellan; but in this instance also the term "subject," it seems, is to be construed with nearly the same restrictions that have been noticed in speaking of the jurisdiction as a Court of Civil Pleas, although, as it has already been observed, the Criminal Courts in the provinces are not founded upon parliamentary enactments. By the recent statute of the 9 Geo. IV. s. 7, 8, 56, 70, provisions are made, without any distinction between native and British persons, for the trial by the Supreme Courts of particular offences, whenever the offender is apprehended or found within the jurisdiction of the Court, although the offence may have been committed elsewhere. In cases of Hindus, however, the Court is forbidden by the 21 Geo. III. c. 70, s. 18, to treat as a crime anything which is done within the family of the party according to the law of caste; and the same statute, by the 8th section, seems to prohibit the Court, in its capacity of a Court of Criminal Justice, no less than as a Court of Pleas, from having any jurisdiction as to anything done in the collection of the revenue, according to usage or to the regulations of the Governor-General in Council. It is not necessary to state over again the powers which are to be exercised by the Court in assistance of the superior Courts in England, or of proceedings in Parliament; but we wish them to be borne in mind, more especially for the purpose of showing the necessity which there is, if these duties are required from the Court, that its process for the procuring of witnesses and other purposes should be effectual in all parts of the provinces.

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provinces. This necessity indeed is found equally in the exercise of its jurisdiction as a Court of Pleas and a Court of Oyer and Terminer; and without a power to take lands, as well as the persons and goods, of those who are liable to be sued in the Court, its judgments in many cases would require to be aided by the Government or the Courts established in the provinces; and to make that aid effectual, it must not be precarious, but a matter of right. These observations, however, are applicable chiefly to the supposition of the Court continuing as at present constituted, and would require modification if the alterations recommended in the latter part of this letter should be thought deserving of attention. There are other statutes, however, of later dates than those already mentioned, which have created additional occasions for the exercise of the powers of the Court in the provinces; as, for instance, in taking evidence upon divorce bills in the House of Lords; and the 26th Geo. III. c. 57, presents cases in which the Court would have to enforce, in any part of the Presidency, by exchequer process, the execution of judgments obtained in England. In addition also to these branches of jurisdiction, though it is necessary to abstain from stating them at length, it must not be forgotten that the Court has extensive powers, which must be exercised in the provinces as incident to its other jurisdictions, especially that of a Court of Equity, and that of a Court for the relief of Insolvent Debtors.

27. Such, as far as we can conveniently state it in this letter, we conceive to be at present the power and jurisdiction of the Court according to law. We have next to advert to various circumstances which in some respects obscure, in others impede its powers, and in many make it doubtful whether the exercise of them be productive of good or evil.

28. It is obvious that the jurisdiction, as it exists, is essentially of a very peculiar character, and that many difficulties are inseparably connected with it. It is an exclusive personal jurisdiction as to a particular class, thinly scattered over a wide extent of country, amongst a dense population, who are considered to be themselves, for the most part, exempt from the jurisdiction, and to live under a very different system of law. In every part of these territories, nevertheless, the process of the Court must be enforced, and even lands must occasionally be seized and divided, or sold, although there is an absolute prohibition against the jurisdiction being exercised in any matter of revenue, which revenue is in fact a share, and a very large one, in every parcel of land throughout the Presidency.

29. These difficulties are aggravated by an obscurity which has been permitted to hang about the relations in which the Indian territories and the Company stand to the Crown and Parliament. Our own view is plainly and simply that the bulk of the Indian territories must be considered as having been annexed by conquest and cession to the Crown of the United Kingdom, but subject, of course, to the observance of all treaties, capitulations and agreements, according to the real intent and meaning of them, which have attended any cessions, and which still continue in force: that to a certain extent British law has been introduced; but that, on the other hand, a very large portion of the old laws of the country have been left standing, but under the administration of British persons, the leading distinction being, that British law and British Courts have been introduced for British persons, and Mahomedan Courts and law permitted to remain for Mahomedan and Hindu persons; and these laws and Courts have been subsequently

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modified by certain legislative or regulating power, which itself also was a continuation of the old legislative powers of the native Governments, though it has been to a certain extent recognised and modified by Parliament. The sovereignty of the Crown of the United Kingdom we hold to be fully established throughout the provinces annexed to the Presidencies; and as an incident of the sovereignty, that the King in Council has in some cases the actual exercise, and in all the right of deciding upon appeals in the last resort, and of superintending the administration of justice: that the Imperial Parliament has as absolute a right of legislating for all purposes as in the United Kingdom itself; but that the East-India Company, being from a long train of circumstances the most convenient depository and organ of the powers which it is necessary to exercise upon the spot, have had the Government principally entrusted to them; and being thus put in the place of those parts of the old Government by which the ancient and still subsisting laws and legislation of the country were wont formerly to be carried on, they exercise, through Governors in Council and their officers, not only the functions distinctly assigned to them by the Crown and Parliament, but some powers also in the administration of justice and in legislation, which, as we have already explained, are not, strictly speaking, derived from Parliament or the Crown, but are portions of the old institutions, which have been permitted by the Crown and Parliament to continue, and have been by Parliament entrusted, for limited periods, to the management of the Company, and recognised as subsisting in their hands. It is only upon this point that we believe any positive difference of opinion exists as to the nature and relations of the Indian Government, and we would fain believe that this is rather verbal than real, and subsists only through misapprehension. In adverting to it, we are anxious to guard against the supposition of our having encountered any difficulty from its being entertained, or even of our knowing it to be entertained, by any of those with whom our duties have brought us into intercourse. But amongst those who have treated of the rights of the Company, some certainly speak of the Company as having "*succeeded*" to these powers of the old native Governments, and seem to found a certain claim of right upon this notion of succession; whereas we conceive that, although to a certain extent the Company does hold the place of the old Governments, it is not by any succession as distinguished from acquisition, but that having been the instruments and agents of conquest, or the means through which cessions have been obtained, and having come into possession in that way, they have been permitted to retain for a certain term by the enactments of Parliament. We may perhaps be in error in supposing that any consequence is attached to this distinction; the subject, however, has been so little brought forward, that the circumstance of the Crown and Parliament having exercised little or no control over some parts of these judicial and legislative powers, has been followed by an indistinctness of apprehension as to the real nature of them. The President and Board will remember, that it has heretofore been made a question, whether the Company had not what has been called, in terms not very easy to be understood, a delegated sovereignty; at other times it has been alleged that the Mogul Emperor still retained a formal and nominal sovereignty; some have suggested doubts whether the continuing possession of the Company, notwithstanding its being a creation of the British Crown and Parliament, is not a proof that the Indian territories have never yet been reduced into possession by the

the British Crown. It cannot be necessary to show in detail that any doubts, wherever they may exist, or by whomsoever they may have been stated, upon such points as these, must be a source of embarrassment to Judges, who have to issue process and execute judgment in the King's name in all parts of the provinces; who may at any time be called upon to ascertain the rights in India, not only of British persons, but of the subjects of the Christian Powers in amity with the British Crown: and who in law are supposed to have the control throughout all parts of the Presidency of the Commission of the Peace. Questions arising out of the most important statutes, such as the Navigation and Registry Acts, the Mutiny Acts, and others, exist in an undecided state, and are scarcely prevented, but by management, from being brought forward for decision, which, whenever it is called for, must turn mainly upon the species of relation in which the Indian territories stand to the United Kingdom. Some of the most important regulations of the Indian Governments have been made without the direct or express authority of Parliament, and are most easily justified as being the exercise of the old legislative powers of the former Governments, not superseded, and therefore continuing to subsist. Many of the regulations about 1793 were of this description. The imposition of taxes in the provinces is perhaps an instance; and it is a power which might come to be a subject of serious discussion, and, if British persons were to be admitted to hold lands throughout India, of vital importance.

30. An offspring of the uncertainty alluded to in the last section, is the peculiar use which has been affixed to the terms "British subjects" in the Statutes and Charters relating to India; a source of difficulties to the Court which daily increases. The corruption of the legal signification of these important terms seems to have originated in the difficulty which was felt in getting over the provisions of the 13 Geo. III. c. 63, and of the Charter of Justice, by which the English laws were, in words, extended in these provinces to all his Majesty's subjects. The Directors, in their letter of the 19th November 1777 to Lord Weymouth, asserted that the natives were not British subjects: but notwithstanding all the difficulties of the times, and that the Ministers were pressed by the calamities of the American war, this point was not acknowledged, even in the statute of 21 Geo. III. c. 70; though expressions and clauses were allowed to be introduced in the statute, from which the result has been, that it is impossible to say who were and who were not meant to be designated by those terms. Subsequently, as the British Government in India proceeded in organizing the judicial system for the provinces, including Criminal Courts, it became necessary that they should describe the natives as subjects at least of the British Government, and as owing allegiance to it. Under all those circumstances, if the question had been mooted in any English court of law, there would have been some difficulty in maintaining that the natives did not, at any rate, fall under the terms "subjects of his Majesty," whenever these words occurred in statutes relating to India. A direct decision upon that question, however, has been avoided; and to meet the difficulty, and with a view perhaps to other consequences, a distinction has been set up between "British subjects" and "subjects of the British Government;" and it is maintained, that generally where the term "subjects" occurs in the Indian statutes, it means "British subjects," and does not include those who are only subjects of the British Government. There is no stable nor sufficient foundation provided for

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this construction at present; for whatever restrictions the Parliament may think it right at any time to put upon their rights as subjects, it is certain that if the case of the *Post Nati* of Scotland, and that of *Campbell v. Hall*, are of any authority, and if the Indian provinces have become British dominions, all who are born within them are British subjects according to English common law, even though the Indian territories should be so far a distinct realm as to have a separate but subordinate right of legislation, and of holding Courts for the administration of justice. The distinction between British subjects and subjects of the British Governments in India has never, we believe, been formally declared in any Act of Parliament, but depends upon an ill-defined supposition of the continuance of the Mahomedan laws, and upon inferences to be drawn from the use of the terms "British subjects" in several statutes and charters relating to India, especially the 21 Geo. III. c. 70, and the Charters of the Madras and Bombay Courts, and upon a fluctuating usage; so that it is quite impossible to say, with any just confidence, who they are who belong to the one class, and who to the other. It seems to be agreed indeed that the terms "British subjects," as they must necessarily include all persons born in Great Britain, or whose fathers or paternal grandfathers have been born there, so they do not include any Mahomedan or Hindu natives of the Indian provinces, who are not inhabitants or natives of Calcutta, Madras, or Bombay, or any other place distinctly recognized as a British settlement or factory: but between these two extremes there are many doubtful classes. Even the Irish would not necessarily fall under the terms "British subjects," as used in 21 Geo. III. c. 70, s. 10. It is understood that the lawyers of the East-India Company have affirmed, that persons born in the British colonies are not, according to the use of the term in the Indian statutes, "British subjects," by reason of their birth-place, nor unless they are descended from a British-born father or paternal grandfather. The natives of Jersey, Guernsey, and Alderney, have not so strong a claim as these Christian persons born in Calcutta, Madras and Bombay, but not resident there; and Hindus and Mahomedans, under similar circumstances, are liable to still more cogent doubts. Do either Hindus and Mahomedans, or Indian Christians, born in the provinces, or Christian foreigners, become temporarily British subjects while domiciled in Calcutta, Madras or Bombay, so that for offences committed beyond the boundaries they would still be amenable only to the Supreme Court? Are the native Christians, or the subjects of Christian princes in amity with the Crown, who may reside in the provinces, to be classed with the Mahomedans and Hindus, or with British subjects? What is the effect of the subsisting treaties with France or other Christian States, in this respect? These and many similar questions do every now and then arise, and it is only by perpetual contrivance that they are prevented from becoming more troublesome. The Statutes and Charters relating to India present various applications of the terms in question; and in several important instances the term "subjects" is used by itself, and it is mere speculation and controversy whether the adjunct "British" is to be understood or not. These distinctions are the more perplexing, because the continuance of the Nizamut, which afforded some sort of explanation of them in Bengal, Behar and Orissa, cannot be alleged in respect to other parts of India, many of which have come under the sovereignty of the British Crown without leaving even a shadow of any former sovereignty lingering behind, and by a course of circumstances which present no alterna-

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tive but that persons born there must be subjects of his Majesty in right of the British Crown, of subjects of nobody at all.

31. The circumstance which perhaps more than any other has contributed to make the jurisdiction of the Supreme Court inconvenient, and which is always brought forward as marking its unsuitness for the duties assigned to it, is not a vice of its original constitution, but the improvident addition to its jurisdiction of all the immense territories which have been subsequently added to the Presidency of Fort William. It was not perhaps impossible that the Court might have been made competent to exercise an effectual and salutary jurisdiction throughout all Bengal, Behar and Orissa, which comprise the whole space to which its powers at first extended; but it never could have been made convenient by any ingenuity of legislation, that its powers of original jurisdiction should be exercised even as to British persons throughout the present Presidency of Bengal, of which some parts are a thousand miles distant from it, and where the means of communication are not to be supposed the same as in England; and as there has been an inclination rather to compress the powers of the Court, than to develope and assist them, it may easily be conceived that when called into exercise in a weak and shackled state, in so vast an area, they are at once ridiculously impotent, and yet very much in the way.

32. It appears to us to be matter for regret that there has never been any plan avowed and distinctly laid down for the gradual assimilation and union of the two systems, which it was necessary at first, and to a great extent is still necessary to maintain, for the British and the natives respectively. In 1773 there seems to have been at most only a temporary obligation to preserve any of the Mahomedan forms of government, and they have by degrees been almost obliterated, but what has come in place of them rests partly on the old basis, and there are still two systems, scarcely less adverse than at first, working with discordant action in the same space. Nothing would be more unreasonable than to attempt to impose upon India generally the British laws as they exist in the United Kingdom, or even in Calcutta; but we are confident that before this time, if there had been a hearty co-operation of all parts of the Indian Governments, one uniform system, not English, yet not adverse to the constitution of the United Kingdom, might have been established in some provinces, to which both British persons and natives might have accommodated themselves, and which would have been fitted at future opportunities to be extended to other districts. This would have been done if the whole legislative and judicial powers of Government had been under one controul; but this has never been the case. The regulations of the Government for the provinces, and civil causes tried in the Provincial Courts, where the matter in dispute is of a certain value, are nominally subjected to the controul of the King in Council, as much as regulations which are registered in the Supreme Court, or causes heard there; but it is scarcely more than in name that this exists; and with the exception of a few appeals in civil cases, it may be said that the legislative and judicial functions of the Indian Governments in the provinces, extensive and active as they are, are exercised under no other controul than that of the Directors and the Commissioners for the Affairs of India, whilst the administration of law for British persons in India is, in theory, independent both of the Indian Governments, the Directors and the Board, and British subjects who choose to abide at the seats of Government cannot be directly subjected to any legislation but that of Parliament, or regulations regis-

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tered in the Supreme Courts. In these circumstances it has naturally been the inclination of those who have the principal influence in Indian affairs, to build separately upon the foundations of that system which is most subjected to themselves, and as it were belongs to them, rather than to bring the remains of the old institutions of the country into any subordination to Courts established upon the basis of Parliamentary enactments; and in many respects certainly ill adapted to the circumstances of the country. Thus two principles of government have been maintained in a sort of struggle with each other, which thwarts and weakens each, and is not in any way advantageous to either. If one of them was to prevail, even to the exclusion of the other, the result must be an interference of the Imperial Legislature to reduce the Indian territories to their true relation with the United Kingdom, that of distinct but entirely dependent dominions, with peculiar though not adverse laws, separate, but entirely subordinate powers of internal legislation, and an administration of justice always liable in all its branches, if not actually subject to the superintendence and controul of the King in Council, or some other Courts of the United Kingdom, or at least of some Court constituted by the Crown. Why should not the most convenient district that can be named in these vast territories be set apart for the purpose of forming, upon this basis, one harmonious system, suited to all classes of persons, and compounded of the two jarring ones which at present divide the people, debilitate the administration of justice, and harass the Government. It has been said, that this is only selecting a part of the mass for the purpose of making experiments upon it; but as every body seems to be agreed that something must be done, we suppose they mean that some experiments must be made, and we seem to differ from those who are adverse to the selection of one province, principally in this respect, that we think it wiser to attempt the introduction of a better system upon a small scale at first, and in that place only, where all the force of Government may be most readily applied in its support, and where its progress will be most immediately subjected to the presence and inspection of those who must direct it.

33. The next head of difficulties is one of which we feel considerable difficulty in speaking. But our motives and the necessity of exhibiting the whole of the case, must be our excuse for saying that some of the inconvenience to which the Court is subjected, and some of which it is the apparent cause, are attributable to the imperfections of the Acts of Parliament and Letters Patent, under which it has to act, or by which it is affected. It would seem as if either from the intricacy of the subject, or an apprehension that difficulties would be encountered in Parliament when modifications of the powers of the Supreme Court have been desired, they have been sought, not by positive and plain enactment, but by the introduction of something in an Act or Charter, which without being likely to excite too much discussion at the time, might nevertheless be available afterwards, as showing an intention on the part of the legislating power to make the required provision. Nothing can be more vague in most respects than the important statute of 21 Geo. III. c. 70; it provided that persons should not be subject to the jurisdiction of the Court for this or for that reason, but left it nearly as open to argument as it was before, whether all those must not be held liable who could be shown to be subjects of his Majesty; it left in the hands of the Government powers of general legislation, and of life and death, which it did not notice, while it specifically imparted to them limited powers

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powers of making regulations, and inflicting, in certain cases, punishment short of death. It employed the terms "British subjects," and "European British subjects," in such a manner, that it is impossible to say what was really meant by them; it expressly left to the Supreme Court the determination of all suits respecting the lands of certain classes of the natives, yet forbade it to interfere in matters connected with the revenue, which is a part of all lands throughout all India; and finally, it made certain provisions for registration which were palpably impracticable from the first, and were scarcely attempted to be carried into execution. We would rather not go through the invidious task of pointing out the indirect and inconclusive, but not therefore inefficient provisions of later statutes; but we can scarcely avoid to notice some of the variations which have been made in the Charters of the Supreme Courts at Madras and Bombay, and the doubts and difficulty which arise out of them. The Acts of Parliament which directed the issuing of these Letters Patent, provided that they should confer the same powers on the new Courts as those which were possessed by the Court at Fort William; but notwithstanding this, the powers granted are very materially different. To pass over the differences as to the appointment of Sheriffs, and the admission of barristers and attorneys, it will be found, that in the definition of the jurisdiction of the more recent Courts, their powers are generally restricted to such persons as have heretofore been described and distinguished by the appellation of "British subjects," whereas, as it would have seemed to us, the powers which the Justices and the Court were to possess in the provinces as Conservators of the Peace, and as presiding over the commission of the peace, whether the criterion of their extent was to be the extent of those granted to the Court at Fort William, or the possibility of their being used to any good purpose, must be exercised, if exercised at all, without distinction of persons. Again, the Bombay Court is prohibited from interfering in any matter concerning the Revenue, even within the town of Bombay, which is directly opposed to the 53 Geo. III. c. 155, ss. 99, 100. Then all natives are exempted from appearing in the Courts at Madras and Bombay, unless the circumstances be altogether such as that they might be compelled to appear in the same manner in what is called a Native Court. This would for many purposes place the Court entirely at the disposal of the Government, who regulate the usages of the Country Courts as they please; and whether any suit arising beyond the limits of the towns of Madras and Bombay should be determined at all, or whether any offence committed there should be punished by the Court, or whether it should be able to collect evidence in aid of any proceedings in England, would come to depend entirely upon the pleasure of the Government. Whether this would be right or not, is not the question; it is inconsistent with the duties assigned to the Courts by statute. In the clause which purports to define the Admiralty jurisdiction of the Courts at Bombay in criminal cases, its powers are restricted to such persons as would be amenable to it in its ordinary jurisdiction, which is again at variance with the 53 Geo. III. c. 155, s. 110; if it is to be understood from this passage in the Charter that the jurisdiction was meant to be limited to such persons as have been described as British subjects; but it is not very clear what is to be understood by ordinary, as opposed to any extraordinary jurisdiction of the Court. This indeed is another species of the defects which we are noticing, namely, that limitations of the jurisdiction have been thus introduced by allusion rather than plain declaration. In one way or another, sometimes by the

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the mention of some qualification of the powers of the Court occurring in an Act or Charter, which has been afterwards insisted upon as a recognition; sometimes by a vague recognition of counter institutions which have been already set on foot without any express authority, and which afterwards, upon the strength of the recognition, are amplified and extended; sometimes by the jurisdiction of the Supreme Court being stated in such a way as to leave it to be inferred that the *expressio unius* is the *exclusio alterius*; sometimes by provisions which, to persons unacquainted with India, may have appeared to be of little consequence, but which in reality involve a great deal; sometimes, when Parliament has provided that new Courts should be established upon the same footing as the old one, by something being accidentally mixed up with the constitutions of the new Courts, which is essentially different from the old, and would be destructive of their efficiency: in some or all of these ways, the Supreme Courts have come to stand at last in circumstances in which it is very hard to say what are their rights, their duties or their use.

34. Though we attribute the principal imperfections and inconvenience of the Supreme Court to the sources which we have described, we have already intimated that there were inherent and almost insuperable difficulties connected with its original constitution, and the circumstances with which it has always had to deal; and we by no means intend to assert that there have never been any faults on the part of those by whom the business of it has been conducted. The application of the forms of British law to the settlement of differences amongst the Hindus and Mahomedans, even of Calcutta, is full of difficulty. The Hindu laws, especially, are one of those ancient systems which the history of the world shows to have existed, in a certain stage of society, all over Asia and a great part of Europe, and of which the main spring was the influence of the priesthood. When this is removed, and laws, which were calculated to be enforced by persuasion, by sacerdotal influence, or religious awe, have to be exercised by means of English Courts and lawyers, and the legal process of writs of execution, it is scarcely possible that the machinery should work well. This remark is peculiarly applicable to the family quarrels of the Hindus; but the inconvenience, great as it is, seems to be necessarily connected for a time with the marvellous position in which England is placed in relation to India. The ordinary state of a Hindu family in respect of property is that of coparcenery between all the males, but any one member has a right to claim a partition. Upon the death of a Mahomedan, his property, including land, is shared amongst his relations, according to peculiar rules, which make it necessary for the purpose of calculation, to subdivide it into minute portions. The mode of settling all cases of this kind in the Supreme Court is by suits in equity, and it may easily be imagined that trouble, expense and delay must attend such proceedings, in which innumerable papers and accounts of many years' standing, in three or four languages, must be produced, translated, given in evidence and investigated, and in which, after all the other difficulties have been overcome, the decrees of the Court, including partitions of interests in land, and consequently the inspection, admeasurement, valuation and allotment of the lands, are to be carried into execution by the European Officers of the Court in the provinces, where the uncertain interests of many parties not included in the suit are involved in the same parcels of land, where the Court is prohibited from interfering in any way with a revenue which is intimately and inextricably



inextricably mixed up with every piece of land, and where the Court is also regarded somewhat in the light of an intruder, or at best a necessary evil, by the civil servants of the Government by whom the provinces are managed. Add to this, that when once dissension has arisen in a native family, nothing can exceed the perverseness with which their disputes are carried on. The object is not to obtain their rights, but to ruin each other. Sometimes they will make a truce for years, and then revive their contentions with fresh zeal. At all times they are represented to be difficult to deal with as clients, and from understanding imperfectly the proceedings of an English Court, to be obstinate and suspicious. Besides, it cannot be expected that any class of the professional persons by whom the business of the Court is to be conducted should, in general, be quite equal, in all desirable qualifications, to those who exercise corresponding functions at home. We make no exception in this remark, even of the highest offices; but we have in view principally the conduct and management of suits under circumstances which are much more difficult, and much more opposed to an accurate and beneficial exercise of the legal profession, than any that occur at home. In almost all suits for partition amongst native families there is another and monstrous difficulty, from the Court having to regulate the disposition of large funds appropriated to the superstitious uses of their religions. Again, some of the longest, most intricate and expensive suits in the Court have been occasioned by the charitable or religious bequests of Christians of various sects. In some of these the Supreme Courts have been called upon to apply money to the benefit of Roman Catholic Establishments at Goa, in others to Greek or Armenian Churches on Mount Lebanon. A commission has been prayed to inspect the records of the Vatican. One highly important case, which long has been and still is before the Court at Fort William, and which, there is little doubt, will ultimately come before the King in Council, presents the following circumstances: A Frenchman by birth, professing no religion but Deism, and who had for some time resided, and at last died at a very advanced age, in the territory of Oude, which is, according to treaty, the dominion of an independent Mahomedan king, leaves great wealth, a part of which is in land. Some of the property, at the time of the death, is within the kingdom of Oude, and some within the presidency of Bengal, and some is vested in the public securities of the British Government. By his will he bequeaths legacies to relations in France, and gives pensions for life to a set of native concubines and servants in Oude; makes large charitable bequests to the city of Calcutta, and the city of Lyons in France, involving the establishment of public schools; and directs also the establishment of what he calls a college, but which is to be connected with a sort of caravanserai, where his tomb is to be kept lighted and watched, in the Foreign and Mahomedan capital of Lucknow; and, after providing for all these, there is likely to be a residue, to which, when they can be found out, the next of kin of a man who had left France in a state of poverty sixty years before, and who had no kindred in India, are entitled; and there is landed property in Calcutta to which his heir-at-law, when discovered, may have a claim; and this heir, according to the English law, is not one of the next of kin, who are only of the half blood. The case is not brought into the Court until the assets have been many years in the hands of a mercantile firm, and are involved in a maze of accounts; once brought before it, however, the Court cannot decline to proceed, yet it is only enabled to proceed

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in respect of the public charities, at the instance of the Advocate-General of the Company, whose official relations are, in some respects, calculated to retard his motions. When such circumstances may occur, and when it is recollected that the Court has no less than seven jurisdictions combined, as a Court of King's Bench, a Court of Civil Pleas, a Court of Oyer and Terminer, a Court of Admiralty, a Court of Equity, an Ecclesiastical Court, and a Court for the Relief of Insolvent Debtors, it will not perhaps be thought very surprising if complaints against it should sometimes arise out of the suitor's disputes. Except, however, in equity cases, there is no ground for any complaint of tediousness in the determination of suits; nor even in equity is the delay to be ascribed to the fault of the officers of the Court. There are no arrears in the Court in any of its departments, and there scarcely ever have been any. The heaviness of the costs in some equity suits, we have no doubt, is a great evil, though perhaps not greater than in England; and it will not be found to arise so much out of any particular fees, as from the misconduct or miscarriage of the equity suits, attributable, in a great degree, to the difficulties which we have noticed, but arising partly no doubt, in some cases, from the inattention or unskillfulness of professional men, and still more perhaps from the waywardness and unmanageable character of the native clients. If we were called upon to devise a remedy for such evils, upon the supposition of the continuance of the present constitution and jurisdiction of the Court, we do not know that we could suggest any other than a reform of the system of equity pleading, a settlement of all bills of costs at stated periods of the year, by the Judges themselves, accompanied by a judicial inquiry into the conduct of each suit, and a division of labour and allotment of business amongst the Judges, by which a more rigid discipline, if we may use the expression, in the conduct of the whole business of the Court might be enforced.

35. We have now, however, in pursuance of the wish expressed in your letter, to submit to the consideration of the President and Board some larger views of the arrangements which, in our opinion, would best conduce to the attainment of the objects for which the Supreme Court was constituted. If we should appear to bring forward any considerations which may be thought to belong rather to general policy than to law, we trust it will be perceived that this is not done to any greater extent than is necessary for the purpose of explaining the remedies which seem to us to be required for the evils that have been adverted to in the former part of this letter, and are strictly a part of the subject respecting which we are called upon to speak. We are sensible, however, that we run the risk of suggesting what may be at variance with views already formed, or with transcendent considerations of general policy, of which we have no information. This is a disadvantage for which we have no other help than to beg that what we offer may be received as it is offered, in the light of very humble suggestions, tendered with much distrust of our own judgments, and with no other desire than to assist his Majesty's Ministers, as far as we can, in arriving at just conclusions of what is best to be done. Our observations are made upon the supposition that India will remain under the government of the Company, subject to the control and regulation of the Crown and Parliament in all affairs of government, whether executive, judicial or legislative.

36. It appears to us to be desirable that all the territories which are permanently annexed to any of the three Presidencies, and in which justice is administered and the Revenue

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Revenue is collected by officers of the British Government, should be declared, in the most unambiguous manner, to be dominions of the Crown of the United Kingdom; that all persons born within the same are subjects of that Crown, owe allegiance to it, and are entitled to protection from it; and that all persons residing there owe that temporary allegiance which would be due from them, if resident in any other dominions of the Crown. But this, perhaps, is a step which would not be taken by the British Parliament, if it were to be considered as securing to the countless population of India the rights of natural-born British subjects. If the legislature should not be satisfied by that exclusion from certain rights, to which all the unchristian natives would be subject, as the law now stands, it might be necessary to enact, that the natives of the British territories in India shall not, by reason merely of their birth-place, be entitled, when resident within the United Kingdom, or any of the dominions of the United Kingdom other than the Indian territories, to any rights or privileges as subjects, beyond what would be allowed to the subjects of friendly foreign states, and that they shall be distinguished by the name of Indian subjects of the Crown of the United Kingdom, with a proviso, that all persons born in India, whose fathers or paternal grandfathers shall have been British subjects, and all other persons who, according to law, would be natural-born British subjects, if born in any foreign state, shall equally be natural-born British subjects, if born within the British territories in India. If such provisions would have the effect of depriving any classes of the Indian natives of rights to which they may at present be entitled as natural-born British subjects, the distinct acknowledgment of their being at least subjects, and entitled to protection, and the foundation which would be laid by the provisions hereinafter mentioned for their enjoyment, in a part of India, of legal rights, would appear to us to be more than an adequate compensation for any thing which could be justly said to be taken away.

37. That a certain district round Calcutta should be distinguished by the name of the Province of Calcutta, and that for the government of this district there should be, to a certain extent, a separation of the executive, judicial and legislative powers, by means of a Legislative Council, and a Court of Appeal or Council of Judicature being added to the existing political body of the Governor-General in Council. Within this province all subjects of the Crown of the United Kingdom, as well British as Indian, without any distinction, should have the right of purchasing, holding and inheriting lands, and the laws throughout that district should be rendered as inviolable, and the administration of justice as regular, and the security of person and property as perfect, as possible. We do not mean that the English laws should be established, but that, subject to certain restrictions, a system should be adapted by the Legislative Council to the whole circumstances in which the province would be placed. It seems to us that the Delta of the Ganges, or in other words, the territory lying between the western or right bank of the Bhagiruter and Hooghly rivers, and the eastern or left bank of the main stream of the Ganges, would be a district, at present, of convenient size; and the best situated for this purpose.

38. It might be declared that all the rest of the territories of this Presidency, although they be the dominions of the Crown, and the inhabitants be subjects thereof, yet by reason of their magnitude and great population, and the various customs and habits of

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the people, and the intricacy of the landed tenures and other circumstances, they cannot, for many years to come, be adapted throughout their whole extent, to an equally regular system of government, and for these reasons the whole government of the same might be declared to be vested as before in the Governor-General in Council, subject to the former restrictions and qualifications; and it might be provided, that whatever persons should choose to abide in, traverse or enter the said territories, should be to all intents and purposes liable to the laws and regulations in force there, and to the authority and powers of the Governor-General in Council, in like manner as any of the Indian subjects of the Crown would be, and that neither the Supreme Court nor any of the other Courts established or to be established within the Province of Calcutta, should have any jurisdiction whatsoever, or exercise any authority, powers or process whatever, within any of the said territories, other than such as hereinafter are expressly and particularly mentioned, but that in all other cases whatsoever when it should become necessary for giving effect to any decree, judgment or order of any of the said Courts, that the lands, goods or body of any person should be seized and taken upon any meane or final process within the said territories, it should be done by such ways and means, and in such manner and form, and according to such regulations, as should be provided for that purpose by the Governor-General in Council. Upon the great question, whether British persons should be allowed to hold lands in the provinces, we should say, that if they would be contented to take the privilege upon the terms above stated, it might be granted. It seems to us that the necessity of the case requires, as to the greater part of the provinces, that the Governor-General in Council must have legislative, judicial and executive powers, subject to no control but by the superior authorities in England; but if Parliament, clearly understanding and being prepared to adhere to this, should choose to put all the subjects of his Majesty, of whatsoever description, upon an equal footing in the provinces, we should not apprehend any serious danger to the State, nor any oppression of the natives, which the Government would not be able by a stern exercise of its power to restrain. But there are two things which it does appear to us to be highly desirable to guard against in any general admission of British persons to the provinces: First, that of giving rise to a delusion that there are the means at present of establishing and enforcing good laws throughout all India, in such a manner that it might be advantageous to British persons to purchase landed estates throughout the provinces. Secondly, the leaving an opening and pretence for subsequent irritation and clamour on the part of British persons so admitted to the provinces, upon the ground of their not enjoying there the rights of English law. If the provinces are to be opened to them, let it be universally understood, so that no doubt may remain, nor any ground for subsequent reproach, that they go to live under a despotic and imperfect but strong government, that they carry with them no rights but such as are possessed there by the natives themselves, and that it is impossible at present to give them either that security and easy enjoyment of landed property, or those ready remedies for private wrongs which more regularly constituted governments afford. A tolerable system of criminal judicature, we believe, might even at present be established throughout the greater part of India.

39. The Supreme Court, besides being restricted from exercising within the territories lying beyond the boundaries of the province of Calcutta, any other jurisdiction than such

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as is hereinafter expressly mentioned, might likewise altogether cease to be a Court of original jurisdiction within that province, except in the cases hereinafter expressly and particularly mentioned, and the authority, powers and jurisdiction of the Court might thenceforth be as follows : First, that within and throughout the province of Calcutta, it should have a complete superintendence and controul over all other Courts and Magistrates. Secondly, that no sentence of death by any other Courts of the province should be executed without the warrant of the Court, and that it should have an original and exclusive jurisdiction as to all those offences which, for distinction, are called offences against the State, and are of a treasonable or seditious nature, committed within the province of Calcutta. Thirdly, that it should have an original jurisdiction as a Court of Chancery, as to all conveyances or devises of land, or gifts or bequests of money for charitable or religious purposes, or other permanent public objects. Fourthly, that it should have an original Admiralty jurisdiction as to all crimes maritime punishable with death, and that the King's commission of Vice-Admiralty for the trial of prize causes should be directed to the Judges of the Court. Fifthly, that it should be, in all cases, a Court of Appeal from the Courts of the province of Calcutta. Sixthly, that it should be lawful for the Governor-General, by commission, to authorize and empower any one or more of the Judges to exercise any judicial function, either original or upon appeal, or by way of inquiry, within the territories lying beyond the boundaries of the province of Calcutta, and respecting any matters arising within the same, whenever the importance and exigency of any case might require it.

40. That a Legislative Council should be established for the province of Calcutta. Our views as to the formation of such a Council have been already stated in a communication made to the Governor-General in Council on the 2d of October 1829, and in a draft of the heads of a bill which we have subsequently prepared by the desire of the Government. We would only add here, that consistently with the scheme presented in our present letter, the right of legislation of the Council would be restricted to the province of Calcutta, but that it might be employed for the other territories whenever the Governor-General in Council should think it expedient. We wish it also to be distinctly understood, that we should propose that the Governor-General should have the right of presiding in the Legislative Council, and that nothing should be enacted, even for the province of Calcutta, without his consent; nor should we see any decisive objection against his presiding also, by appointment of the Crown, in the Council of Judicature or Court of Appeal, whichever it might be called, if it should be thought that in this way a more perfect harmony of government would be secured.

41. The first duty of the Legislative Council would be, to constitute subordinate Courts of Justice for the province of Calcutta, and until this should be done, the Supreme Court and the Country Courts must continue to exercise their respective functions. Our opinions upon this point also, of the system of Courts best adapted to India, is expressed in a paper which has already been seen by the Government, and which, at their request, is about to be submitted to them in an official form; and we would only observe here, that for the province of Calcutta we conceive that below the Court of Appeal or Council of Judicature there ought to be one Provincial Court held at Calcutta, about four Zillah Courts; the town of Calcutta and its suburbs constituting of itself one Zillah, and an

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of Justice.

adequate number of Pergunnah Courts; that we would make all persons, without exception, eligible as Judges and officers of the Courts, but in practice, one at least of the Judges of every Zillah Court ought always to be a natural-born British subject, and in the Provincial Court all the Judges should be natural-born British subjects, and one of them should be an English barrister of ten years' standing. With the exception perhaps of that one person, and of all the Judges of the Court of Appeal or Council of Judicature, who ought to be appointed by the Crown, the other Judges of all the Courts within the province of Calcutta might be appointed by the Governor-General in Council. The functions of these Courts, except the Provincial Court, might be confined ordinarily to civil causes, and criminal Courts for the trial of misdemeanors and of minor felonies, might be constituted by the Zillah Courts sitting at stated periods, with the addition of the Justices of the Peace; other felonies of a worse nature would be reserved for the Provincial Court alone.

42. The Governor-General and Council, as at present constituted, would retain within the province of Calcutta all their present powers, as far as they should be consistent with the new provisions; and it ought to be declared much more plainly than it has hitherto been, that throughout the other territories they have the exercise by themselves, or through the Company's servants, of all authority executive, legislative and judicial, including the power of life and death, subject to the direction and control of the Court of Directors and Board of Commissioners, and to the supreme power of the Crown and the Imperial Parliament. The Governor-General in Council, however, should also have the discretionary right of calling in aid the Legislative Council or Court of Appeal, and referring to them any matters arising in any part of the territories, and of appointing upon emergencies the members of these bodies, or any other persons, Commissioners to act in and for any part of the territories.

43. The basis and essential part of this plan is, that the two systems of law and sorts of Government, which it seems to be necessary to maintain in India, should respectively be confined to separate local limits, instead of struggling together within the same; but it is not meant that the system to be established around the seat of Government should be exclusively British, but one adapted to all the circumstances of the country, though in complete subordination to the Crown and Parliament. The plan would afford to all British persons, and to any other classes of the community who should set a value upon the protection of a regular system of law and Courts, the opportunity and means of living under it; on the other hand, it would secure the natives in the outer provinces from that annoyance which it is affirmed they have occasionally experienced from the process of British Courts; and it would preclude all collision between the two sets of Courts and systems of law. It would do away with all invidious distinctions between the different classes of inhabitants. In the province of Calcutta, all without distinction would have all the most important rights belonging to the inhabitants of a British settlement; in the other territories, all would be equally reduced to such as might be found consistent with the more despotic power which necessity should require to be maintained there. This need not be more despotic than at present it is; as to those who constitute ninety-nine hundredths of the whole population; on the contrary, let it be mitigated and regulated and improved as much as may be consistent with security; but let British persons

## SELECT COMMITTEE OF THE HOUSE OF COMMONS. 1841

persons who voluntarily place themselves under it, be as much subjected to it, and in the same manner, as the rest of the people. Those who now, for the purposes of trade, connect themselves with the cultivation of land in the interior, might continue to do so; whilst, for those who should wish to settle for life in India, and to purchase durable interests in land, the province of Calcutta would present a sufficient area for several years to come; and all who are acquainted with the country will acknowledge the general advantage which would result from the increase in number of convenient places of residence for British persons even within that limited space. The most effectual defence against the Indian climate is, an accommodation of the place of residence to the season of the year; and it is a fact, not understood in England, that all India might be divided into circles of a radius of less than 200 miles, within each of which, in one direction or another, at every season of the year, a wholesome and a pleasant climate might be enjoyed. The limits of the province of Calcutta would not be so large as to make it an unreasonable expectation, that throughout that district, in which already there is every where a permanent settlement of the revenue, the Courts of Law and a Legislative Council together, might be able first to ascertain, and in some degree fix the nature of those customary interests in land, which are so great a difficulty in the way of making any property in it valuable or secure, and might provide some ready means of settling the disputes which will arise out of this sort of property as long as it subsists, and at the same time open some course by which, with the strictest regard to justice, and without any preference of the English to any other system of law, these inconvenient and barbarous forms of property, such as have at some time or other existed in almost every other country, might, as in other countries, be resolved into more convenient, simple and definite ones, to the advantage of all parties. We wish it to be clearly understood that it is not English law, but whatever law should be found best adapted to the country, that we should seek to establish, subject to certain specified exceptions and restrictions preservative of the sovereignty of the Crown and authority of Parliament. The task of preparing, establishing and conducting of a firm system of law within the province of Calcutta, might afford at least as much occupation to those who now find employment in the Supreme Court as they would lose by the alteration of its jurisdiction. The interests of religion, and the progress of moral instruction, would seem to us to be likely to be promoted by these arrangements; and the Legislative Council and Court of Appeal would constitute channels for the exercise of that control by the Crown and Parliament, within a certain district, over all legislation and administration of justice, which, in some way or other, must ultimately be established throughout the whole British territories, even though India should be made as distinct a portion of the British dominions as Ireland was before the Union, and gradually, as the system should be perfected within its limited range, it might be extended to other provinces.

44. We beg permission to guard ourselves against the appearance of being influenced in these recommendations, and particularly the latter part of them, by any feeling adverse to the East-India Company. Many alterations heretofore have taken place in the constitution of the Company, and others no doubt will take place hereafter, but we do not foresee any circumstances in which it would not appear to us to be desirable that the main organ of government for India should be a body of Directors, resident in England, and  
elected

LEGISLATIVE  
COUNCILS,  
&c.

Papers submitted  
by Judges.

Administration  
of Justice.

## 1242 FIFTH APPENDIX TO THE THIRD REPORT OF THE

LEGISLATIVE  
COUNCILS,  
&c.

Papers submitted  
by Judges.

Administration  
of Justice.

elected by the holders of stock, representing property in India, and depending mainly for its value upon the prosperous condition of that country ; and we regard with the greatest consideration and respect the interests of those by whom, under the Directors, India is for the most part actually and immediately governed. They and their connexions form as it were a large family, which has claims upon India founded in long expenditure upon it of all that is valuable in life ; they only are qualified by information and experience to conduct the details of its affairs, and one of the principal points, in all plans for the government of India, ought to be the preservation of all their real interests, and the securing of their willing and cordial assistance.

45. In conclusion, we wish to say, that if our suggestions should be thought deserving of further consideration, we shall be happy to enter into more complete details of what has been stated in this letter in a very general and imperfect manner ; nor are we so prejudiced in favour of the plan recommended by ourselves, that we should have any reluctance to give the fullest consideration to any other which may be thought preferable. We are strongly impressed however with the following conclusions : That the trade with India being irrevocably free, there must be a greater resort to Bengal of British persons than can be confined to Calcutta or its immediate neighbourhood ; that there are not the means at present of establishing, throughout the vast extent of this Presidency, a system of law and government under which British persons resorting to India could or ought to be compelled to live, and that in these circumstances the wisest course will be, to provide a sufficiently regular and liberal, and to a certain extent British system, for a well-defined portion of the country, small indeed in proportion to the whole territories, but sufficient in reason for the ordinary and permanent abode of the families of those British persons whom the trade of India may bring to the country ; to leave it to their own choice whether they will pass beyond the boundaries within which they have the opportunity of living and holding property under the protection of that system, but to let them know distinctly that if they do make that choice, they leave their English rights behind them, and pass into another state of things which necessity requires to be differently managed.

We are, &c.

True copy :

(Signed)

HOLT MACKENZIE,  
Secretary to Government.



# SELECT COMMITTEE OF THE HOUSE OF COMMONS. 1830

LEGISLATIVE  
COUNCILS,  
&c.

No. 27.

LETTER from the Governor-General in Council to the Hon. Sir Charles Edward Grey, Knight, Chief Justice, and the Hon. Sir Edward Ryan, Knight, Puisne Justice of the Supreme Court of Judicature at Fort William in Bengal; suggesting for their consideration certain Alterations and Additions in the Bill to be intituled, "An Act for establishing Legislative Councils in the East-Indies."

HON. SIRS:

Fort William, 28th Sept. 1830.

We do ourselves the honour to acknowledge the receipt of your Letter, under date the 13th instant, with its Enclosures, Nos. 1, 2, 3, and 4, and we avail ourselves of this opportunity to convey to you our acknowledgments for the obliging attention which you have shown to our suggestions.

Alterations  
suggested by  
Governor-General  
in Council in the  
Bill proposed by  
Judges.

With respect to the first mentioned document, or heads of a Bill, to be intituled "An Act for establishing Legislative Councils in the East-Indies," we take the liberty of suggesting for your consideration the propriety of introducing the alterations and additions contained in the accompanying Paper. As to the form of their introduction we are indifferent, and we should indeed feel ourselves obliged by your modifying the language of our propositions, in such manner as may seem to you advisable. But we should wish that the substance of them may be preserved as much as possible. They were not resolved upon without mature deliberation, and we could not relinquish them without apprehension that the efficiency of the system of Indian government would be thereby materially impaired.

We propose to take into our consideration, at the earliest possible period, the various and important questions discussed in the other documents, numbered 2, 3 and 4, and most fully concurring with you in the sentiment you have expressed, that "upon a subject, respecting which, from its extent and intricacy, all opinions are so liable to be misunderstood, those which are stated otherwise than plainly and fully may serve for much mischief, but can scarcely do any good." We shall communicate to you, with perfect candour, the conclusions at which we may arrive, after having maturely weighed your valuable suggestions.

We have, &c.

(Signed)

W. C. BENTINCK.  
W. B. BAYLEY.  
C. J. METCALFE.

Clause 4.—For the words "*or in the neighbourhood, and within some convenient distance of the same at such,*" substitute "*or at such places as may be most convenient, and at such.*"

The following addition to be made to clause 6: "Provided, however, that it shall and may be lawful for the Governor-General in Council to carry on any cases in which he may consider that serious mischief to the interests of the British Government would arise from the suspension of any law, to cause the same to be carried immediately into effect, notwithstanding that the Judge or Judges may have expressed his or  
their



LEGISLATIVE  
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Alterations  
suggested by  
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their belief or opinion, that such law or regulation is not within the powers vested in the Legislative Councils, by this or any subsequent Act. In all such cases, where any law or regulation may be passed on the emergency above adverted to, a written notice of the resolution to pass such law or regulation shall forthwith be transmitted by the Governor-General in Council to the Judge or Judges, and such law or regulation shall thenceforward take effect and be binding, until his Majesty's pleasure be known, any repugnancy or supposed repugnancy notwithstanding; but on all such occasions the Governor-General in Council will be required to state fully and at length the grounds of the existing emergency, and without delay to submit the same, together with all the documents that may have been recorded on the subject, through the usual channel, for the consideration of his Majesty in Council."

The following rules to be substituted for clause 9: "When any law or regulation shall have been resolved upon at any lawful meeting of the said Legislative Councils, and have been sent round to the resident Members for the expression of their approbation or dissent in writing; then, if the Governor-General or the Governors of Fort St. George and Bombay shall think fit, they shall be competent at this stage to correct the further progress of the proposed law or regulation. If, however, the said Governor-General or Governors of Fort St. George and Bombay respectively shall approve the further progress of such proposed law or regulation, notice of the general object of it shall forthwith be published in the Government Gazette, or some other newspaper of the place, and an interval of fourteen days at the least shall take place, from the time of the first publication, before the Governor-General shall give his final consent (excepting any case in which the Governor-General in Council may be of opinion that serious mischief to the interests of the British nation would arise from the said delay of fourteen days, in which case the circumstances being duly specified and recorded, the law or regulation may be passed on the emergency), and if any person or persons interested in or affected by any such law or regulation, shall petition any such Council to take into consideration his or their objections against it, at any time before the consent in writing of the Governor-General of Fort William for the establishment of such law or regulation shall have been given, the Governor-General or Governor or Vice-President of the Presidency at which the law or regulation shall have been made, shall direct at what time and place any such person or persons shall state his or their objections, and whether by written petition only, or by counsel, or in person; and it shall be lawful for any person or persons who may be aggrieved by any such law or regulation, to appeal against the same to his Majesty the King in Council, who shall have full power and authority at any time to repeal the same, but such appeal or notice thereof shall be made or given within six calendar months of the publication in India of the law or regulation which shall be the subject of appeal; provided moreover, that whenever the Governors of Madras or Bombay respectively shall object to and stop the progress of a proposed law or regulation, he shall, at the request of any Member of the Legislative Council, lay before such Council a statement of the grounds of his objections; and any Member, disapproving of such grounds, may enter upon the Minutes the grounds of his disapprobation; and in all such cases of difference of opinion, the whole of the documents connected with the subject shall be submitted for the consideration and decision of the Governor-General, to whom it shall be competent to confirm the

# SELECT COMMITTEE OF THE HOUSE OF COMMONS. 1845

the rejection of the proposed law, or to lay the same before the Supreme Legislative Council, to be dealt with as if such law or regulation had been approved at the subordinate Presidency, and had been transmitted in due course to the Supreme Council for confirmation. In like manner, whenever the Governor-General may object to and arrest the progress of a proposed law or regulation, which may have been resolved upon in the first instance by the Supreme Legislative Council, he shall, at the request of any Member of such Legislative Council, lay before it a statement of the grounds of his objections, and any Member disapproving of such grounds may enter upon the Minutes the grounds of his disapprobation; and in all such cases of difference of opinion, the whole of the documents connected with the subject shall be submitted for the consideration and decision of his Majesty in Council, which authority shall pass such orders as it may see fit, either for the final rejection or for the adoption of the proposed law or regulation.

"Provided also, that nothing contained in this Act shall be construed to limit or restrict the powers now legally exercised by the Governor-General in Council of the Presidency of Fort William, or of the Governor in Council of the Presidencies of Fort St. George and Bombay respectively, excepting in so far as the same may relate to the making of laws and regulations."

True copies :

(Signed) HOLT MACKENZIE,  
Secretary to the Government.

(No. 1246.)

No. 28.

LETTER from the Governor-General in Council to the Hon. Sir Charles K. Grey, Knight, Chief Justice, and the Hon. Sir Edward Ryan, Knight, Puisne Justice, of the Supreme Court of Judicature at Fort William in Bengal; communicating the sentiments of his Lordship in Council, on the Papers submitted by them relative to the formation of a Code of Laws and the establishment of a System of Courts for the British Territories in the East-Indies.

Governor-General  
in Council's  
Sentiments on  
Papers submitted  
by Judges.

1. We have already had the honour of communicating to you our sentiments on the draft of a Bill, &c. which accompanied your Letter of the 13th ultimo.

2. We now proceed to state what has occurred to us on a consideration of the other important and valuable Papers with which you have favoured us; and first, as to the observations relative to the formation of a code of laws for the British territories in the East-Indies.

3. You have justly stated the confusion which exists under the law as it now stands, in regard to the rights of various classes of persons, and on this branch of the subject we have little or nothing to add to the exposition contained in your Letter to the Secretary to the Board of Control, of the circumstances which have chiefly occasioned the difficulties and embarrassments under which all authorities, engaged in the civil administration of the country, equally labour. Whether, indeed, the principles ordinarily applicable to conquests by the Crown, could have been fitly applied to provinces of so vast an extent,

LEGISLATIVE  
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suggested by  
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acquired under circumstances of a very peculiar nature, partly by arms, partly by negotiation, and partly by arrangements for which it might not be easy to find a suitable designation among the stated terms of European jurists, seems to us to be very questionable ; but whatever principle had been followed, we imagine that it must equally have been found impossible for the British Parliament to legislate for the details of the civil administration of this country, without occasioning innumerable doubts and difficulties at every step. On all sides therefore it must, we think, be manifest that the chaos which you have so forcibly and justly described, can only be reduced into order by means of a local legislature, acting of course under a complete subordination to the Parliament of England. And it seems to us to be not less evident, that the legislative interposition of Parliament ought to be confined, as far as possible, to matters affecting the general concerns of the empire ; and that in respect to local details, even when it may see reason to interfere, it should proceed rather by general resolutions, to be reduced into law by the local legislature, with a full knowledge of local peculiarities, than by formal enactments binding to the letter.

4. With reference to your remarks as to the second branch of law, or the law of property, we are sorry that we cannot bring ourselves to concur in the opinion you have expressed. You suggest that one law should be established for all moveable property (as well as for matters of contract) to whatever class of persons belonging, and that the laws to be established should be the law of England. The only advantage you appear to anticipate from this is, the advantage of uniformity. In matter of contract it may be observed, that the principles of equity and good sense are enjoined ; not those alone of the Hindoo and Mahomedan laws. On the proposition of introducing a new law, as relates to moveable property, we are of opinion that the innovation would be at once unwelcome and unnecessary. The rules of inheritance, both Hindoo and Mahomedan, by which much moveable property changes owners, are clear, simple and well defined ; and the few points on which conflicting doctrines are entertained, might easily be set at rest by a declaratory enactment ; cases unprovided for, or rules manifestly repugnant to justice and sound policy (if such exist), may similarly be provided for as they may occur. But any general enactment, which should sweep away at one stroke the laws of our Hindoo and Moslem subjects relative to moveable property, would, we apprehend, be the occasion of much complaint ; and, as already observed, we are not aware of any evil practically experienced under the present law to call for any violent remedy. Generally, indeed, in making a code, our object would be rather to declare what the law is, than to change what is fully established, or to attempt to provide prospectively for future exigencies, unless with the view of supplying obvious defects, or of correcting evils actually experienced.

5. With these sentiments, we should think it advisable to leave untouched the law relative to real property, excepting in the case of British-born subjects. Considering the purposes for which these generally acquire, and are likely to acquire such property, and the expediency of avoiding all artificial obstacles to its free transfer, it seems to us that it would be convenient and advantageous, if the estates of that class were declared to be a chattel interest merely ; some simple rules relative to registry and transfer, and some clear definition of the modes in which such property should pass and be required, being

at

# SELECT COMMITTEE OF THE HOUSE OF COMMONS. 1847

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at the same time established. With this modification, we conceive that the English law of property, subject of course to modification from time to time by the local legislature, might be advantageously made applicable to all Christian persons. It is unnecessary now to advert particularly to the rules which may become necessary to provide for the case of persons passing from one class to another. Possibly no provision may be required in addition to that above suggested, for the application of English law to all Christian persons.

6. But some new rules relative to the execution of wills, and the administration of the estates of intestates, appear to be very urgently required, and in regard to Christian persons, the whole scheme of ecclesiastical law must be distinctly considered.

7. No objection occurs to us against the extension, as proposed by you, of the English law relating to private injuries. Already, indeed, our Courts are mainly guided by the principles of that law, and the only change needed seems to be better and fuller definitions, and such an amendment in the forms of action and process as, while it preserves to the utmost extent practicable, the simplicity that distinguishes our existing rules in this respect, may better accommodate them to the various exigencies for which Courts of Law and Equity have to provide.

8. We have great satisfaction in expressing our entire concurrence in the concluding observation of the Paper now referred to, as to that branch of the law which relates to public wrongs. We are satisfied that a penal code such as you describe, might without difficulty be prepared; but even in this matter we are equally convinced of the advantage of a local council over a distant legislature, to which many things, very important to be considered in adjusting the scale and determining the nature of punishments, cannot be familiarly present.

9. We have now to advert to a very important question, on which we regret to find ourselves compelled to dissent from the views which you entertain. We mean the separation of a certain tract of country for the introduction of a new code and judiciary system. Against this arrangement, many and grave objections occur to us.

10. The principle on which the suggestion is founded appears to require that, as proposed by you, an inconsiderable portion only of the territories subordinate to this Presidency should be included within the tract to be set apart for special laws and a peculiar system of administration. And howsoever therefore the limits might be adjusted, the same, or nearly similar results must, we apprehend, follow, as are to be anticipated on the supposition that your recommendation for confining it to the Delta of the Ganges, were adopted. Now, what would be the position in which we should then place the government of the country? The districts in question (supposing that to the west Moorshedabad, and eastward Dacca Jelalpoore, were wholly included) may probably yield about a moiety of one of the great staples of the country, indigo. Their population\* may be estimated

* Moorshedabad	..	..	..	..	..	..	..	..	..	..	..	763,000
Nuddea	..	..	..	..	..	..	..	..	..	..	..	1,187,000
Twenty-four Pargunnahs, Suburbs and City	..	..	..	..	..	..	..	..	..	..	..	1,225,000(a)
Jessore	..	..	..	..	..	..	..	..	..	..	..	1,184,000
Dacca Jelalpoore	..	..	..	..	..	..	..	..	..	..	..	868,000
												4,947,000

(a) The Christian population of Calcutta was rated in the Census of 1822 at 13,183.

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&c. \*

Governor-General  
in Council's  
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estimated at about 5,000,000, and the European residents (exclusive of Calcutta) are stated in the latest Report of the Superintendent of Police at 160 only. Unquestionably it is an object of no ordinary importance to provide good laws, and an establishment that would well administer justice for so numerous a people. But we should greatly lament to see that object pursued in any manner that would indicate, or afford the slightest ground for the insinuation, that the remaining vast, populous and wealthy provinces subordinate to this Presidency, many of which we have now possessed for about seventy years, were wilfully and deliberately to be left subject, for an indefinite period, to a scheme of laws and judiciary system which it would be thought unjust to apply to a comparatively inconsiderable body of our countrymen. It would be repugnant to our feelings, it could scarcely fail to shock the public sentiment, to pronounce such a sentence of virtual outlawry on the great majority of our native subjects even for a single day, and if the general system prevailing in the interior of the country were of that defective character which the proposed measure would indicate, it is the obvious and bounden duty of our Government to proceed forthwith to the work of reform, and to avoid carefully every measure that might tend to raise artificial obstacles to its progress.

11. The neighbouring districts of Beerbhoom, Jungle Mehals, Burdwan, Hooghly and Midnapore are stated to contain a considerably larger population than the tract you have indicated.\* If we exclude the city of Calcutta and the suburbs, they will be found, we believe, to possess a larger mass of wealth, and to present a greater value of property for adjudication in the Courts.† In all of them there are several European residents.

They

	Population.
* Beerbhoom .. .. .	1,267,000
Jungle Mehals .. .. .	1,305,000
Burdwan .. .. .	1,188,000
Hooghly .. .. .	1,239,000
Midnapore .. .. .	1,914,000
	<b>6,913,000</b>

† Moorshedabad .. .. .	549,000
Nuddea .. .. .	383,000
Twenty-four Pergunnahs and Suburbs .. .. .	147,000
Jessore .. .. .	274,000
Dacca Jelalpoore .. .. .	117,000
	74,000
<b>Total</b>	<b>2,248,000</b>

Beerbhoom .. .. .	250,000
Jungle Mehals .. .. .	577,000
Burdwan .. .. .	124,000
Hooghly .. .. .	214,000
Midnapore .. .. .	247,000
	345,000
	127,000
<b>Total</b>	<b>2,154,000</b>

Property at Stake in the Zillah and Subordinate Courts, 31 Dec. 1858.	Property adjudged by the Zillah and subordinate Courts. &c.
549,000	224,000
383,000	147,000
147,000	274,000
274,000	117,000
117,000	74,000
<b>2,248,000</b>	<b>836,000</b>
250,000	124,000
577,000	214,000
124,000	247,000
214,000	345,000
247,000	127,000
<b>2,154,000</b>	<b>1,057,000</b>

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They present opportunities for the successful application of European skill that are not to be found within the Delta of the Ganges, possessing valuable coal mines, abounding in iron ore, and producing a very large supply of sugar, of which little or nothing is produced within the districts of the Delta. Probably, indeed, it was not your intention strictly to adhere to the line of demarcation specified, since not to mention the collieries of Burdwan, the property of British-born subjects, it would exclude the populous suburbs on the opposite side of the river, and the very important establishment at Fort Gloucester, and several zemindarees and indigo concerns will, we believe, be found to extend to both sides of the Great River and of the Bhageruttee. But, as already observed, whatever limits we take, consistently with the principle on which the scheme must be made to rest, equal difficulties pursue us. They would not indeed be obviated by including in the scheme the entire province of Bengal. The obligation of providing for the pure and prompt administration of good laws is not less urgent and indispensable in the provinces of Behar and Benares than in the immediate vicinity of Calcutta.\* Each of those provinces contain a very large population, with a greater share of wealth, intelligence and spirit than is to be found in the Lower Provinces beyond the limits of the city and its suburbs. They are not less entitled to the benefit of equal laws well administered, than any other portion of our subjects, they are probably more capable of appreciating good government. They are certainly much more likely to resent misgovernment than the people of Bengal. There would therefore be something extremely objectionable, we conceive, in an act which would virtually proclaim to the people of those provinces that measures for the reform of the judicial administration, on which their property and happiness depends, were to be postponed until a special scheme should be fashioned and matured for a comparatively confined tract and limited population around the Presidency of Fort William.

12. Even, therefore, if we looked to the natives alone, who are likely, in the progress of education, to acquire every day a greater community of sentiment with their rulers, and

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	Estimated Population.	Property at stake in the Zillah Courts, 1858.	Property adjudged, & 1858.
<b>ZILLAS OF BEHAR :</b>			
Sarun .. .. .	1,464,000	544,000	179,000
Shahabad .. .. .	909,000	571,000	74,000
Patna .. .. .	256,000	532,000	225,000
Behar, exclusive of Ramghur	1,341,000	947,000	138,000
Terhoot .. .. .	1,698,000	1,307,000	354,000
<b>Total</b>	<b>5,668,000</b>	<b>3,901,000</b>	<b>969,000</b>
<b>ZILLAS OF BENARES :</b>			
Benares .. .. .	500,000	529,000	449,000
Ghazee pore .. .. .	.. .. .	468,000	251,000
Juanpore .. .. .	3,170,000	467,000	147,000
Mirzapore .. .. .	.. .. .	383,000	203,000
Gorackpore .. .. .	1,989,000	820,000	190,000
<b>Total</b>	<b>5,659,000</b>	<b>2,667,000</b>	<b>1,240,000</b>

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LEGISLATIVE  
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&c.

Governor-General  
in Council's  
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and many of whom, you are doubtless aware, possess properties in various districts, we should be averse to any plan of arbitrary distinction between the different parts of our dominions, as likely to occasion embarrassment and discontent, our real policy being, we conceive, gradually to extend to the whole country, with the modifications required by local circumstances, whatever institutions are found most consonant with our position, and with the wants and wishes of the people. Still more does such a policy appear to be required by a consideration of the actual circumstances in which British residents are now placed, and of those which must, we apprehend, be anticipated on their being permitted more freely to resort to this country.\*

13. Nor are there fewer objections to the scheme of separation, if we regard it in what may be termed its commercial relations.

14. Much indigo is produced in the more distant parts of Bengal, still more in the provinces of Behar and Benares, where European residents are consequently as numerous nearly as in the districts adjoining Calcutta. The culture of cotton, sugar and tobacco, and the growth of the mulberry for the manufacture of silk, chiefly prevails (the three first-mentioned articles more especially) in the remoter districts. Saltpetre, and various dyes

\* COMPARATIVE STATEMENT of Amount adjudged in the Provincial Courts of Calcutta, Moorshedabad, and in those of Behar and Benares.

	1826.	1827.	1828.
Calcutta Provincial Court	2,074,000	631,000	483,000
Moorshedabad Ditto ..	544,000	671,000	1,022,000
Total	2,618,000	1,302,000	1,507,000
Patna Provincial Court	1,034,000	3,247,000	778,000
Benares .. Ditto ..	5,602,000	1,499,000	2,098,000
Total	6,636,000	4,746,000	2,873,000

COMPARATIVE STATEMENT of Amount at Stake in the Suits pending in the above-mentioned Courts.

	1826.	1827.	1828.
Calcutta .. .. .	8,104,000	6,598,000	8,217,000
Moorshedabad .. ..	10,122,000	10,302,000	9,902,000
Total	18,226,000	16,900,000	18,119,000
Patna .. .. .	7,015,000	5,016,000	5,389,000
Benares .. .. .	45,082,000	43,653,000	42,897,000
Total	52,097,000	48,669,000	48,286,000

dyes and drugs, are all unknown to those adjoining the Presidency; and both to the east and west, it is beyond any limits, we imagine, compatible with your scheme, that unoccupied land is to be found, in considerable quantity, available for the settlement of European adventurers, with the exception of the Sunderbunds. It would therefore, we imagine, be deemed altogether unreasonable to adopt a plan founded on the assumption that the resort of British settlers should be confined within a few districts surrounding the Presidency, or that there only they would find a scheme of law and judiciary establishments calculated to protect or control them, otherwise than in the spirit of a military despotism. Such a restriction upon their enterprize would never surely be tolerated. Such an avowal of incompetency, however misplaced, must be fatal to the Government that made it. We cannot, however, deem any restriction necessary; and with every readiness to admit the imperfection of our institutions (where are laws and courts not imperfect?), we see no reason to conclude that they may not, without any arbitrary separation of the different parts of the empire, be so improved by a plan of steady and gradual reform, as to afford in every part of the country (excepting, of course, certain poor and wild tracts which are inhabited by uncivilized races), a security for person and property not less perfect than is enjoyed in any of the foreign dominions of the British Crown.

15. We do not of course, in regard to arrangements, the success of which must mainly depend on the fitness of the instruments employed, by any means object to the principle of giving effect to them only as duly qualified agents can be found. But in advocating a gradual reform, we would be understood to refer rather to the nature of the changes to be made than to the local limits to which they apply. A sudden and great change of rights, interests or institutions, would be mischievous, though restricted to a single Pergunnah. The progress of improvement will beneficially proceed, with well measured steps, throughout the whole of British India. It is therefore against the adoption of a rule by which we shall arbitrarily prevent ourselves from adopting our course of proceedings to actual circumstances, we would be understood to argue; and we confess we do not anticipate, from the free permission to Europeans to settle in the interior, with the liberty of purchasing lands, any such consequences as should deter us from adopting one general scheme of administration for the whole of the provinces. We do not think it likely that the number of persons embarking in the speculation will be numerous. We should not anticipate from their presence any occasions of dispute which a tolerably good judiciary establishment would not be fully competent to settle; nay, we should look rather for increased facilities for getting at the facts, the ascertainment of which now constitutes our main difficulty, since none of them would have that timid jealousy, and the worst of them are not likely to have, in equal degree, the spirit of chicane, which unfortunately distinguish all classes of our native subjects, and which frequently leads to the concealment of the truth, even when its discovery would be beneficial to the party. The conditions on which land is held are indeed various; but there is not generally any seriously embarrassing entanglement of properties when the real circumstances are developed. All undefined *classes* which resembled the *incidents* of the *feudal tenures* have long since been done away; and in so far as concerns the security of private rights and their ready adjustment, what is wanted is not, in our judgment, a change of tenure, but the simple discovery and record of what already exists.

LEGISLATIVE  
COUNCILS,  
&c.

Governor-General  
in Council's  
Sentiments on  
Papers submitted  
by Judges



LEGISLATIVE  
COUNCILS,  
&c

Governor-General  
in Council's  
Sentiments on  
Papers submitted  
by Judges.

We hold it to be impracticable to compel British subjects to congregate within a very limited space, consistently with the objects for which we desire to see them admitted to the free possession of landed property ; for land is not generally to be obtained, excepting at a very high price. In prosecuting their schemes of improvement, they must seek a variety of soils and climate. They cannot, we apprehend, expect to be able to compete successfully with the natives in the production of the ordinary articles of agriculture ; and for success in any pursuit, they must diligently avail themselves of every attainable advantage in the way of low wages and unimproved capabilities, which must gradually disappear with the spread of knowledge ; in a word, looking to all the circumstances of the country, it seems to us, that Europeans must cease to find any large profit in agricultural adventure, when they cease to be the instructors of the people ; and seeing how rapidly the latter appear to be capable of acquiring European knowledge, the former must, from that circumstance alone, be few in number. It is very unlikely, they should wish to retain landed property in India, if it did not yield them a profit much exceeding the mere interest which they could derive at home from the money value of it.

17. With the above sentiments on the plan of separating a certain tract of country for the introduction of a new code and a modified judiciary system, it is satisfactory to us to find, that amongst those valuable and important suggestions contained in the Papers 2 and 3, relative to the formation of a code and the establishment of Courts, which command our concurrence, there are none that might not, in our judgment, be applied with equal facility to the country generally as to a single province ; and that the objections which occur to us against the other measures you have proposed, have no reference to the extent of the sphere within which they may be called into operation.

18. We cordially unite with you in opinion, that all the Indian territories which constitute the three Presidencies, should be considered and declared to be dominions of the Crown of the United Kingdom, for which Parliament has an unquestionable right of legislation. We likewise entirely assent to your suggestion, that as soon as possible, one code of law should be established for all persons and all places within the same, reserving of course the special laws and usages which depend upon the religious creed of the different classes of our subjects, and that there should be one system of Courts, of which the highest should be filled by Judges appointed by his Majesty. We cannot regard the commercial concerns of the Company as opposing any serious obstacle to the adoption of any scheme that may otherwise be thought expedient. We consider it in the highest degree desirable, that every thing which can tend to separate in reality, or in the estimation of the community, the Government of the King from that of the Company, in so far as concerns the political administration of this country, should be discontinued ; and if any part of the system according to which the Company's commercial affairs are now managed, has this tendency, we doubt not that it will be corrected. On that score, therefore, we do not anticipate any difficulty in adopting whatever system of judiciary establishments may appear to be best suited to the circumstances of the country, and the scheme of which you have given a general outline in the paper, No. 3, agreeing nearly with what we should ourselves wish to see established, it does not appear to be necessary that we should trouble you with any remarks, excepting on a few points.

19. First

# SELECT COMMITTEE OF THE HOUSE OF COMMONS. 1253

LEGISLATIVE  
COUNCILS.

19. First, as to the actual state of things, the annexed Memorandum\* will give you a general conception of the business of the several descriptions of Courts, civil and criminal, now established for the administration of justice in the interior of the country.

20. You will thence observe that the Native Judges already dispose of about 15-17ths of the regular civil suits (original and appeal) tried and determined throughout the country, and that it is chiefly in the Superior Courts that the suits in arrear are of long standing. Of the original suits pending before the Judges and Registers, a large proportion will be found to relate to things of a value under 1,000 rupees; and although, therefore, the jurisdiction of the Native Judges were still restricted to that sum, the Zillah Judges

Governor-General  
in Council's  
Sentiments on  
Papers submitted  
by Judges.

\* STATEMENT OF CRIMINAL BUSINESS in the several Courts belonging to the Presidency of Fort William, for the Years 1827 and 1828.

	Western Provinces.		Lower Provinces.	
	1827.	1828.	1827.	1828.
Magistrate's Courts:				
Persons apprehended, &c.	39,335	32,077	60,511	70,189
Ditto punished ..	15,655	12,439	24,748	25,060
Ditto acquitted ..	20,831	17,217	32,193	42,501
Ditto committed ..	2,749	2,693	2,570	1,986
Courts of Circuit:				
Persons convicted ..	1,197	1,320	973	1,376
Ditto acquitted ..	694	913	671	1,185
Nizamut Adawlut:				
Persons acquitted ..	93	165	129	95
Ditto convicted ..	453	979	425	263
Sentences of death ..	39	31	22	23
Ditto of transportation	34	4	9	39
Ditto of imprisonment	360	244	304	221

STATEMENT OF REGULAR CIVIL SUITS in the several Courts belonging to the Presidency of Fort William, for the Years 1827—28.

	Instituted.		Disposed of.		Pending.	
	1827.	1828.	1827.	1828.	1827.	1828.
Sudder Dewanny ..	139	171	118	148	469	402
Provincial Courts ..	1,359	1,489	1,415	1,236	3,454	4,000
Zillah Judges ..	63,350	60,400	9,681	8,989	27,656	27,233
Registers ..	Included in the above		6,022	4,427	10,392	10,902
Sudder Aumeens ..			45,086	44,784	35,030	36,204
Mooniffs ..	115,797	118,619	113,180	114,380	60,685	61,317
Total ..	180,645	175,649	176,342	173,944	136,492	140,144

LEGISLATIVE  
COUNCILS,  
&c.

Governor-General  
in Council's  
Sentiments on  
Papers submitted  
by Judges.

Judges might be greatly relieved by a different distribution of the business ; insomuch that if they were at the same time freed from their magisterial duties, we have little doubt that, with occasional aid in particular districts, they would be able promptly to decide all the cases requiring their decision ; and thus to obviate any reasonable ground of complaint on the score of delay, excepting what may arise from defects of process, susceptible, we conceive, of easy amendment.

21. We are disposed to doubt whether natives could advantageously be associated with the European officers, as Judges in the Zillah Courts. Men of admirable acuteness and talent we certainly could command ; and in a few years, probably, the prospect of honour and liberal emolument would produce an abundant supply of any species of knowledge, for the acquirement of which means may be afforded. But moral character depends not less on the general sentiment of the community than on the workings of the individual mind ; and its improvement, however ultimately sure to follow, will not necessarily keep pace with the progress of knowledge. Independently, therefore, of considerations resting on the peculiarity of our position in this country, it seems to us that, for a considerable time to come at least, the natives must be kept distinctly in subordination to the European Zillah Judges, though they, as well as other native persons, may probably be rendered very useful in the capacity of assessors or jurors ; and we are not prepared to say, that they ought not eventually to be vested generally with the primary jurisdiction of all civil suits. We are likewise doubtful how far it would be expedient to have any tribunal interposed between the Zillah Courts and the Court of Final Jurisdiction in this country. The expense of such an establishment would be great ; its utility is questionable ; for the Provincial Judges must apparently be so numerous as to make it doubtful whether we could generally obtain for the office the services of men better qualified than the Zillah Judges may reasonably be expected to be ; and if they were not superior, then there would be no sufficient reason why they should have higher powers than the Zillah Judges ; nay, to give them any power of ultimate decision that would exclude the higher Court, would be mischievous, and their interposition must, in any event, operate to lower the Zillah Courts, and to debar them from many of the advantages they would derive from being brought into immediate contact with the highest local Court. On general grounds, indeed, it seems to us to be desirable to restrict, within narrow limits, the appeals of right from one British Judge to another, litigation and the frivolous prosecution of their suits being prevalent vices, and the proper function of all British authorities being direction and control, to be exercised with the least possible appearance of disunion among those who, in their different ranks, administer the affairs of India as the representatives of the British Government. It seems to us, consequently, that the Presidency Courts of Appeal should be placed immediately above the Zillah Courts. How many Presidency Courts should be instituted is a separate question, the determination of which must, in a great measure, depend on the decision that may be passed in regard to the distribution of the political and executive authority of the Government. But whether there be three or four, or any other number of Presidencies and Presidency Courts, it will, we conceive, be desirable that the Court at Calcutta, or some chamber thereof, should have ordinary jurisdiction in certain cases, of the nature of those

## SELECT COMMITTEE OF THE HOUSE OF COMMONS. 1255

those specified in the second paragraph of your Paper ; and it should further exercise, in the capacity of a Supreme Appellate Tribunal, such special powers of correction and control as may be necessary to maintain consistency of decision throughout the whole of British India.

22. In the criminal department it will not, we imagine, be difficult to contrive a system of jury-trial for all cases which it may appear desirable to have so tried ; and if our Zillah Judges were wholly freed from their magisterial functions, we do not think that there would remain any reasonable ground of objection against their having primary cognizance of all cases, whether British-born subjects or natives were concerned, subject to the directions of the Presidency Court, to which, of course, certain cases might be required to be referred before execution,

23. Arrangements might, we imagine, without difficulty be made to secure all the advantages of Circuits, without the inconvenient delay incident to the plan of Sessions, held at distant periods. But in the present stage of the business it is not perhaps necessary to go further into detail. Whatever plan be adopted, it seems to be clear that it can be successfully carried into effect only by means of a Legislative Council in this country, empowered to enact laws for all persons and all places within British India ; since, in the application of the best devised system, there must arise a multitude of laws that no human foresight can anticipate ; and were the British Parliament to undertake the task of constructing a system by enactments emanating directly from itself, no one can reasonably doubt that the result must be the accumulation of doubts and difficulties that would most mischievously interfere with the good government of the country.

24. In the above remarks we have used, with entire frankness, the freedom of discussion you have invited, satisfied that such a course of proceeding is due to the great national interests involved in the questions at issue, and that we thus best evince the high importance we attach to the suggestions with which you have so obligingly favoured us.

We have, &c.

(Signed)

W. C. BENTINCK.

W. B. BAYLEY.

C. T. METCALFE.

Fort William, 9th October 1831.

True copy:

(Signed)

HOLT MACKENZIE,

Secretary to the Government.

LEGISLATIVE  
COUNCILS.  
&c.

Governor-General  
in Council's  
Sentiments on  
Papers submitted  
by Judges.

LETTER from the Judges of the Supreme Court to the Governor-General in Council, in reply to Letter of the 28th September ; stating their sentiments on the Additions and Alterations proposed in the Bill.

Garden Reach, 7th October 1830.

RIGHT HON. LORD AND HON. SIRS :

We have had the honour of receiving your letter of the 28th ultimo.

Judges of  
Supreme Court  
in reply to  
Governor-General  
in Council's  
Sentiments.

One of the proposed alterations appears to us to be unnecessary, and in some degree objectionable. It is that which upon any emergency would give to the Governor-General the power of passing any law resolved upon at any meeting of three Members of the Council, without allowing the interval of fourteen days to elapse. We understand that this was suggested by a provision in the statute 9 Geo. IV. c. 83, s. 25, respecting the Legislative Council of New South Wales ; but it will be found upon examination that the power there given is only that of dispensing with an eight days' notice *before* the law is resolved upon in Council, and such a dispensing power is unnecessary in the case now before us, because it is not proposed that any such previous notice should be given. To authorize the Governor-General to dispense with the *subsequent* interval of fourteen days, would produce great confusion ; for he might then pass a law, without knowing that it would be thought objectionable, which might afterwards be declared, not only by the Judges, but by a majority of the whole Council, to be disapproved of by them, or even to be thought absolutely unlawful.

The other alterations proposed by you have been introduced by us into the amended Minutes of a Bill which accompany this letter. To make them consist with other parts, it has been necessary to alter the arrangement of several of the clauses, but we believe the whole will be found now to correspond with your views, and to establish the following course for the passing of a law at this Presidency : *viz.* That it shall be proposed in a meeting of at least three Members of the Legislative Council ; if resolved upon, that it shall then be sent to the Governor-General, who may either quash it or send it round to all the Members of the Council then resident in any part of the Presidency : all those Members must express in writing their assent or dissent : if a majority of the whole express dissent, the regulation falls to the ground ; if the majority assents, it is established as law, unless the Judges declare it to be unlawful, in which case it is suspended, unless the Governor-General takes upon himself to give it a temporary effect until the pleasure of the King in Council can be declared.

There are some inconveniences which may arise out of the alteration which you have required to be introduced, by which an unlimited discretion is left to the Governor-General as to the place of assembling the Council. The Judges of the Supreme Court, whilst the Court is fixed at Calcutta, could scarcely attend the Council elsewhere, and yet their presence, according to the present form of these Minutes, is rendered necessary.

If this circumstance or any other should appear to call for a modification of the Minutes as they are now framed, it has occurred to us, and we submit it for your consideration,

# SELECT COMMITTEE OF THE HOUSE OF COMMONS. 1257

deration, that if the Supreme Court should be made principally a Court of Appeal, it might be a convenient arrangement that two persons appointed by the Crown, together with one Member of the existing Council and the Governor-General, should form a Legislative Council, and two other persons, appointed by the Crown, together with the other Member of Council and the Governor-General, should form the Court of Appeal or Council of Judicature; the presence of the Governor-General not being made necessary, but the right only of presiding in each Council being reserved to him when it should be thought expedient to exercise it.

We are, &c.

(Signed) CHAS. EDWD. GREY.  
EDWARD RYAN.

A true copy:

(Signed) HOLT MACKENZIE,  
Secretary to the Government.

No. 30.

LETTER to the Hon. Sir Charles Edward Grey, Knight, Chief Justice, and the Hon. Sir Edward Ryan, Knight, Puisne Justice of the Supreme Court of Judicature at Fort William in Bengal; explaining more clearly the views of his Lordship in Council, in suggesting an alteration commented upon in the Letter of the 7th October 1830.

HON. SIRS:

11th October 1830.

We do ourselves the honour to acknowledge the receipt of your letter, dated the 7th instant, with the amended Bill which accompanied it.

2. With respect to the alteration which we suggested, and which appears to you unnecessary, and in some degree objectionable, we regret that we should not have expressed ourselves with sufficient clearness and precision. Our object was that the Governor-General should be empowered to dispense with publication, in cases of emergency, after the proposed law had been sent round to all the resident Members of the Legislative Council. This explanation will, we trust, do away with the objection which you attached to the suggested alteration; but with the view of removing all ambiguity, we have put it into another shape. A copy of the rule as now altered is annexed, and we would suggest that the substance of it be introduced at the end of the 9th section, or at such other part of the proposed Act as you may consider more suitable.

3. You will observe, that in addition to the power of dispensing with publication, we now propose that a power should be lodged with the Governor-General, in extraordinary cases, of obviating the delay which would arise from sending round a law to all the resident Members of the Council. We conceive this power to be necessary to meet cases of emergency; and as each Member of the Council would receive due notice, and have the option of attending the meeting, we are not aware that the proposition to confer it, limited as it will be to cases of great emergency and to laws of a short duration, can be considered in any degree objectionable.

4. We

LEGISLATIVE  
COUNCILS,  
&c.

Judges of  
Supreme Court  
in reply to  
Governor-General  
in Council's  
Sentiments.

Governor-General  
in Council  
to Judges, in  
explanation.

LEGISLATIVE  
COUNCILS,  
&c.

Governor-General  
in Council  
to Judges, in  
explanation.

4. We venture to suggest to you an alteration of the period specified in the 6th section, from twelve to eighteen calendar months, this last-mentioned period appearing to us no more than sufficient for the notification of the pleasure of his Majesty in Council respecting any law or regulation passed in this country, adverting to the ordinary length of time occupied in the voyage to and from England, and to the interval which must be allowed for the deliberation of the home authorities.

5. On the subject of the inconveniences which you anticipate as being likely to arise from leaving to the Governor-General an unlimited discretion as to the place of assembling the Council, we have only to remark, that we never intended that this discretion should be exercised except in cases of urgent and manifest necessity. Epidemic diseases may arise which would render it unsafe to reside at the Presidency or in its vicinity; the contingencies of war may render the removal of the seat of Government expedient and necessary; and various exigencies, now unforeseen and not easily enumerated, may occur to make the exercise of such a power indispensable; and it ought, of course, to be competent to the Legislative Council to meet such contingencies by an alteration in the seat of the Supreme Court.

6. Under the extreme improbability of such an emergency arising as that adverted to in the preceding paragraph, we conceive that it would be obviously premature to discuss at length the questions involved in the proposition contained in the concluding paragraph of your letter, which we are of opinion will with more propriety be left for the consideration of the Legislative Council, after sufficient experience has been had of the operation of the proposed system.

We have, &c.

(Signed) W. C. BENTINCK.  
W. B. BAYLEY.  
C. T. METCALFE.

**PROPOSED AMENDED RULE** adverted to in Paragraph 2, of the Letter under date the 11th instant.

“ PROVIDED, however, that in any case in which, in the judgment of the Governor-General, the safety and tranquillity of the British possessions in India, or the public interest, essentially require that any law should be finally passed by the Legislative Council, holding a meeting as aforesaid, without the delay that would attend the reference of the draft to all the resident Members of that Council, or without publication, it shall be lawful for the Governor-General to approve and confirm the law immediately after its being resolved on and passed as aforesaid. But in all such cases, the Governor-General shall, in summoning the Council, cause notice to be given to each and every one of the Members resident at the Presidency or place at which the Council is held, that it is his opinion that the law should be passed on emergency. Such law, however so passed on emergency, shall have effect for the period of twelve months only, or until the pleasure of his Majesty in Council respecting the same, before the expiration of the said twelve months, shall be declared. And in every such case the Governor-General shall state in writing the grounds and reasons of such emergency, and shall enter the same upon the proceedings of the Legislative Council, by which the law or regulation shall have been

## SELECT COMMITTEE OF THE HOUSE OF COMMONS. 1259.

been prepared, and the same Council shall forthwith transmit copies of the law or regulation and all the proceedings connected therewith, to the Board of Commissioners and Court of Directors, in manner hereinbefore provided, in order that the pleasure of his Majesty in Council may be declared thereon."

True copies :

(Signed) **HOLT MACKENZIE,**  
Secretary to the Government.

LEGISLATIVE  
COUNCILS.  
&c.

No. 51.

LETTER from the Judges of the Supreme Court to the Governor-General in Council ;  
returning Amended Minutes of a Bill for establishing Legislative Councils in the  
East-Indies.

Garden Reach, 13th October 1830.

RIGHT HON. LORD AND HON. SIRS :

We have had the honour of receiving your letter, dated the 11th instant, with the amended Minutes of a Bill, and the draft of a further amendment proposed to be made therein.

We have gone through the amended Minutes, and have introduced such alterations as have made them now entirely correspond with your views ; and we enclose a fresh copy of the Minutes, with all these further alterations inserted in red ink.\* There are a few which are mere corrections of inaccuracies or omissions in the former copies.

The only point in which the Minutes now differ from your last suggestion, is the opportunity which is reserved (even upon urgent occasions) to all the Members of the Legislative Council, who are resident upon the spot, of seeing and approving or disapproving of any proposed law ; but, in such cases, the power is secured to the Governor-General of establishing the law, at all events, on the next day but one after it has been agreed upon in any meeting of the Legislative Council. So short a delay in the making of a law cannot in any case be productive of inconvenience ; and if you should think it desirable, we should have no objection to its being directed that the written disapprobation by any Member of any Legislative Council of any proposed law or regulation shall be kept secret, both before and after any such law or regulation shall be established, except that it shall be communicated to the proper authorities in the United Kingdom, and to all the Members of the Legislative Council, and shall be entered upon the proceedings thereof.

We have the honour to remain, Right Honourable Lord and Honourable Sirs,

Your obedient humble servants,

(Signed) **CHAS. EDWD. GREY.**  
**EDWD. RYAN.**

True copy :

(Signed) **HOLT MACKENZIE,**  
Secretary to the Government.

Judges of  
Supreme Court  
to Governor-Gen.  
in Council,  
with Amended  
Minutes of Bill.

\* The red-ink alterations are printed in italics.



HEADS of a Bill, to be intituled "An Act for establishing Legislative Councils in the East-Indies."

1. WHEREAS the Civil and Military Government of the Presidencies of Fort William, Fort St. George and Bombay, in the East-Indies, subject to such superintendence, direction, control and restrictions as for that purpose have been provided and established, is entrusted to the Governor-General in Council for the time being, and the Governors in Council of the said Presidencies; and also the ordering, management and government of all the territorial acquisitions and revenues therein: And whereas such Governor-General in Council, and Governors in Council, have been authorized and empowered, by several Acts of Parliament, to make rules, ordinances, regulations and laws, as well for the imposition of duties and taxes as for divers other purposes; and it hath been enacted, that all regulations affecting the rights, persons or property of the natives, or of any other individuals who may be answerable to the Provincial Courts of Justice, shall be registered in the judicial department, and formed into a regular code; and it hath also been provided that the rules, ordinances and regulations made for the settlements of Fort William, Fort St. George and Bombay, and the factories and places subordinate thereto, shall be registered in the Supreme Courts of Judicature at the said settlements, with the consent and approbation of the said Courts; and further provisions have been made for the better enabling of his Majesty in Council, in some cases, to disallow or repeal, and in others to amend such rules, ordinances or laws: And whereas it is necessary that a power should at all times be vested in some persons, resident within the British territories in the East-Indies, of making regulations and laws for all the territories and people there under British Government: And whereas the several Acts of Parliament which have heretofore been passed for that purpose have been found to be in some respects imperfect and inconvenient, and it is expedient that more full, certain and effectual provisions should be established instead of them; be it therefore enacted, that so much of an Act, intituled, &c.

13 Geo. III. c. 63, ss. 36, 37.

21 Geo. III. c. 70, s. 28.

37 Geo. III. c. 142, s. 8.

39 & 40 Geo. III. c. 79, ss. 11, 18, 19, 20.

47 Geo. III. sess. 2, c. 68, ss. 1, 2, 3.

53 Geo. III. c. 155, ss. 98, 99, 100.

and so much of every other Act heretofore passed as in any way relates to the making of any laws or regulations by the Governor-General in Council, or the Governors in Council of any of the said Presidencies, be, and the same are hereby repealed: Provided always, and be it further enacted, that nothing herein contained shall be construed so as to repeal any regulations heretofore made by any Governor-General in Council, or Governor in Council; but all such regulations, until they be expressly repealed or altered by some competent authority, shall have the same force and effect as they would have had if this Act had not been passed.

2. And be it further enacted, that there shall be one Legislative Council within each of the said Presidencies of Fort William, Fort St. George and Bombay.

3. Each of the said Legislative Councils shall consist respectively of the Governor-General

# SELECT COMMITTEE OF THE HOUSE OF COMMONS. 1844

General or Governor of the Presidency for the time being, and of all others the Members of the Council of the Presidency and of the Judges of the Supreme Court of Judicature of the Presidency, and of such other persons not exceeding in number, as from time to time shall be appointed by his Majesty, his Heirs or Successors, or by the Directors of the East-India-Company, subject to the approbation of his Majesty, his Heirs or Successors, such approbation to be signified in writing under the Royal Sign Manual, and to be countersigned by the President of the Board of Commissioners for the Affairs of India.

4. Each of the said Legislative Councils, or so many of the Members thereof as shall be able to attend, shall meet and assemble from time to time at some place to be appointed by the Governor-General, Governor or Vice-President, within the towns of Calcutta, Madras and Bombay respectively, or at some place within twenty miles of the said towns; or in case of any urgent necessity, at some other place, to be appointed by the Governor-General and Council, or Vice-President, at such times and in such manner as such Governor-General, Governor or Vice-President, shall also direct; and it shall not be lawful for any of the said Legislative Councils to assemble in the capacity of a Legislative Council, otherwise than as herein provided.

5. Each of the said Legislative Councils shall be capable of deliberating, resolving and acting in its capacity of a Legislative Council, whenever three Members thereof shall be lawfully assembled, provided that one of the three be either the Governor-General, Governor, Vice-President or some other Member of the Council of the Presidency, and another be one of the Judges of the Supreme Court, but not otherwise, unless there should be no Judge then resident within the Presidency, or the provinces annexed thereto, or unless, upon any urgent occasion, there should be a refusal to attend, or an impossibility of attendance, or any wilful neglect to attend on the part of all the Judges then resident as aforesaid; in any of which cases, and after a Minute of the circumstances shall have been entered upon the proceedings of any such Legislative Council, and signed by the Governor-General, Governor or Vice-President for the time being, it shall be lawful for any three Members of any such Council, who may be assembled upon any such occasion, to deliberate, resolve and act in all respects as a Legislative Council, in the same manner as if one of the Judges had been present: And be it further enacted, that all the proceedings at any meeting of any such Legislative Council shall be conducted, as nearly as possible, in the same manner and form as the proceedings before the Governor-General in Council are by statute directed to be conducted, and that no Governor-General or Governor shall have any power, at any such meeting, of passing any law or regulation of his own sole authority: Provided always, that in every case in which any thing is by this Act made to depend upon a majority of any of the Legislative Councils, or of any of the Members thereof, every Governor-General, Governor or Vice-President, shall have a casting vote.

6. Every proposed law or regulation, after it shall have been resolved upon at any lawful meeting of any of the Legislative Councils, shall be sent, in the first place, to the Governor-General, Governor or Vice-President for the time being of the Presidency; and it shall be lawful, upon such occasion, for any Governor-General, Governor or Vice-President, to express his dissent in writing, and to forbid the passing of that law or regulation,

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See 33 Geo. III.  
c. 155, s. 80.

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lation, and at once to quash and annul the same or to direct that it shall be sent round to the other Members of the Legislative Council so resident as aforesaid; and every such Governor-General, Governor or Vice-President, is hereby required, upon every such occasion, within two days from the receipt of every such proposed law or regulation, either to forbid and annul the same, or to direct it to be sent round to the Members of the Legislative Council, and thereupon copies of the same shall be sent to all the Members of the Legislative Council in which the law or regulation shall have been proposed, who at the time shall be resident within twenty miles of the place where the Council shall have met and resolved upon the law; and every such resident Member, whether he shall or shall not have attended the meetings of the Council at which such law or regulation shall have been deliberated or resolved upon, shall signify in writing, without delay, his assent or disapprobation thereof; and if upon such occasion it shall appear, upon the whole, that the majority of the Members so resident as last aforesaid, within the distance of twenty miles, are adverse to the passing of such proposed law or regulation, it shall be abandoned and fall to the ground; and if any two of the Judges of either of the Supreme Courts, or in case there be only two or only one of the Judges so resident within twenty miles as aforesaid at the time, then if the only Judge, or the Chief Justice, or in his absence the senior Judge of the Supreme Court of the Presidency at which the law or regulation shall have been passed, shall state in writing his or their disapprobation thereof, by reason of his or their opinion and belief that such law or regulation is not within the powers vested by this or any subsequent Act in the Legislative Council in which the law or regulation shall have been proposed, and shall also state his or their grounds or reasons for such opinion and belief, then, unless the Governor-General of Fort William shall expressly direct, in manner and form hereinafter mentioned, that it shall have effect, every such law or regulation respecting which such disapprobation, opinion and belief shall have been so stated as aforesaid, notwithstanding it shall have been approved by a majority of all the Members of the Legislative Council so resident as aforesaid, shall be suspended, and shall have no force nor effect until such time as it shall have been referred to the President of the Board of Commissioners for the Affairs of India for the time being, and to the Directors of the East India Company, and until the orders of such President respecting the same shall have been received in India; and the said President for the time being is hereby authorised and required, in all such cases, to submit any such law or regulation to his Majesty in Council; and after having so submitted the same, and after his Majesty's pleasure thereupon shall have been declared, to issue his orders to the Governor-General of Fort William for the revocation or suppression, or the publication and enforcement of the law or regulation; and if any such law or regulation shall be so directed to be published and enforced, it shall, after such publication, have the same force, authority and effect, and no other, as if no such suspension as hath hereinbefore been mentioned had taken place: Provided always; and be it further enacted, that whenever any of the Judges shall have so stated his or their disapprobation, opinion and belief as aforesaid, nevertheless if a majority of all the Members of the Legislative Council, so resident within twenty miles as aforesaid, shall have expressed their assent to such law or regulation, and if the Governor-General of Fort William in Bengal, notwithstanding any such disapprobation

probation of the Judges shall be willing to take upon himself the responsibility of deciding that such disapprobation hath an sufficient foundation, or that the urgent necessity of the case, and the public safety, require that effect should be given to the proposed law or regulation, respecting which such disapprobation shall have been expressed, it shall be lawful for the Governor-General of Fort William in Bengal, to direct that it shall have effect accordingly for eighteen calendar months, or until the pleasure of his Majesty in Council respecting the same, before the expiration of the said eighteen months, shall be declared; and in every such case the Governor-General shall state in writing the grounds and reasons of making such decision, and shall cause the same to be entered upon the proceedings of the Legislative Council by which the law or regulation shall have been prepared, and the same Council shall forthwith transmit copies of the law or regulation, and all the proceedings connected therewith, to the Board of Commissioners and Court of Directors in manner hereinafter provided, in order that the pleasure of his Majesty in Council may be declared thereon; and in the mean time, for the space of eighteen calendar months, or until the disapprobation of his Majesty in Council of such law or regulation before the expiration of the said eighteen calendar months, shall be declared, the law or regulation so directed by the Governor-General as aforesaid to have effect, shall be to all intents and purposes as valid and effectual in law as if it had been passed by the Legislative Council without any disapprobation on the part of any Judge or Judges having been expressed.

7. The lawful powers of each of the said Legislative Councils to be exercised in manner and form as herein is expressed, shall extend to the making of laws and regulations for repealing, amending or altering of any regulation heretofore made by any Governor-General in Council, or Governors in Council, or hereafter to be made by any of the said Legislative Councils, and to the making of laws and regulations for all other purposes whatsoever, and for all manner of persons, whether British or native, foreigners or others, and for all places and things whatsoever, within and throughout the whole and every part of the British territories in the East-India, in the possession and under the Government of the East-India Company, except as hereinafter is excepted, and subject to the conditions and restrictions hereinafter expressed, and at all times and in every respect subject to the full, absolute, and supreme legislative power and control of the Imperial Parliament of the United Kingdom of Great Britain and Ireland: Provided always, and be it further enacted, that the Legislative Council of the Presidency of Fort William shall have full power and authority to make all such regulations and laws for the other Presidencies of Fort St. George and Bombay, but that no regulation or law made by either of the Legislative Councils for the said Presidencies of Madras or Bombay, shall at any time have any force, authority or effect, notwithstanding any confirmation of such regulation or law by the Legislative Council of the Presidency of Fort William, except within the limits of the territories constituting the Presidency by the Council of which it shall have been primarily made.

8. It shall not be lawful for any of the said Legislative Councils to make any law or regulation which shall in any way repeal, vary, suspend, or affect any Act of the Imperial Parliament, nor any Letters Patent of the Crown, nor in any way affect any prerogative of the Crown or authority of Parliament, nor the constitution or rights of the

East-India Company, nor any part of the unwritten law or constitution of the realm of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any persons to the Crown of the United Kingdom, or the sovereignty or dominion of the said Crown over any part of the British territories in the East-Indies.

9. Except in any such case as hereinafter is specially excepted and provided for, as soon as any law or regulation shall have been resolved upon at any lawful meeting of any of the said Legislative Councils, and shall have been directed by any Governor-General, Governor or Vice-President, to be sent round to the other Members of the Legislative Council, it shall forthwith be published in the Government Gazette, or some other newspaper of the place; and after an interval of not less than fourteen days after such publication, and after a sufficient time shall have elapsed to receive the assent or disapprobation of all the Members of the Legislative Council so resident within twenty miles as aforesaid, the law or regulation shall be laid again before the Governor-General, Governor or Vice-President, to receive his final or further assent, and if any person or persons interested in or affected by any such law or regulation, shall petition any Governor-General, Governor or Vice-President of the Presidency, to take into consideration his or their objections against it, at any time before the final or further assent in writing of any such Governor-General, Governor or Vice-President, shall have been given, the Governor-General, or Governor or Vice-President, shall direct at what time and place any such person or persons shall state his or their objections, and whether by written petition only, or by counsel, or in person.

10. After fourteen days, and at some time not later than two calendar months, from the publication as aforesaid, of any such law or regulation, the Governor-General, Governor or Vice-President, shall express his confirmation or disapprobation thereof, and thereupon every such law or regulation which shall have so received the final disapprobation of any Governor-General, Governor or Vice-President, shall be abandoned and fall to the ground; and every law or regulation made by the Legislative Council of Fort William, which shall upon such occasion receive the confirmation of the Governor-General or Vice-President of Fort William, shall be fully established as a law; and every proposed law or regulation which shall have been made by the Legislative Council of Madras or Bombay as aforesaid, and shall have received the confirmation of the Governor or Vice-President of either of those Presidencies, shall without delay be forwarded to the Governor-General of Fort William in Bengal, who thereupon, within one calendar month after receiving the same, shall either communicate in writing his disapprobation thereof to the Governor in Council or Vice-President in Council of the Presidency at which the law or regulation shall have been made, in which case it shall be abandoned and fall to the ground, or the Governor-General of Fort William in Bengal, shall cause such law or regulation to be proposed in the Legislative Council of the Presidency of Fort William, in like manner as any other law or regulation, and it shall pass through the same forms, and by the said Legislative Council of Fort William shall be confirmed and fully established, or registered in the manner as if it had been a law or regulation originally brought forward therein, except that it shall not have any force or effect except in the Presidency in which it shall have been primarily made; and

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and no law or regulation of either of the Legislative Councils at Madras or Bombay shall have any force or effect whatsoever until it shall have been so confirmed, and passed into a law and fully established by the Legislative Council of Fort William in Bengal.

11. And whereas occasions may arise in which the usual publication in any newspaper of any law or regulation, before the confirmation and establishment of it by the Governor-General, would be productive of public inconvenience, and in which it may be desirable that effect should be given to the law or regulation with the least possible delay, it shall be lawful in any such circumstances for the Governor-General to direct, that the usual publication in a newspaper before the confirmation of the law or regulation, shall not in that instance take place; and to require also that every Member of the Legislative Council, so resident within twenty miles as aforesaid, in whom the law or regulation shall be sent, shall communicate to the Governor-General his assent or disapprobation within twenty-four hours from the time of a copy of the law or regulation being left at his usual place of residence; and after such time shall have elapsed, it shall be lawful for the Governor-General immediately to decide upon the law or regulation, and to establish and give effect thereto, in like manner as in other cases it hath been provided that he may not in respect of any law or regulation, after the lapse of fourteen days from the publication thereof, in a newspaper.

12. As soon as conveniently may be after any law or regulation shall have been lawfully and fully established in any of the ways aforesaid, the same shall be carefully registered and preserved as a record by the Legislative Council or Councils through which it shall have passed, and it shall be printed and published in the English language; and for the better securing of a general and accurate publication thereof, one printing-office or press for each Presidency, and no more, shall from time to time be licensed by the Governor-General in Council, or Governor or Vice-President in Council of the Presidency, to print and publish the laws of each Legislative Council, and the granting or changing of such licences shall from time to time be notified by proclamation or public advertisement; and each of the said Legislative Councils shall from time to time make such standing orders as may be most convenient and effective for the due publication of such laws in as many of the languages of India, and in such manner as will most effectually secure a speedy, full and complete promulgation thereof throughout the British territories in the East-India, so that the knowledge thereof may be communicated to all who may be liable to be in any way affected thereby.

13. If any person or persons shall wilfully publish any false statement of any law of any of the said Legislative Councils, he or they shall be deemed guilty of a misdemeanour and shall be punished accordingly, and if any person shall suffer damage or loss in consequence of being misled by any such false statement, it shall be a good cause of his recovering damages in a civil action, to be instituted against the party or parties by whose false statement he shall have been so misled.

14. Within one month after the passing and registering of any law or regulation by any of the said Legislative Councils, the Governor-General in Council, or Governor or Vice-President in Council, shall send duplicate copies of the same to the Court of Directors of the East-India Company, and to the President or Secretary of the Board of Commissioners



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Commissioners for the affairs of India, and at any time within one year from the first receipt of any such law or regulation, it shall be lawful for the President of the said Board of Commissioners, after having submitted the same to his Majesty in Council, to transmit to the Legislative Council of the Presidency of Fort William an order for the repeal of the same, and the same shall be forthwith repealed: Provided always, that all acts done under and according to any such law, during its continuance and previous to any repeal thereof, whether such repeal shall take place upon any appeal being made to his Majesty in Council, or otherwise, shall be good and valid; and all persons shall be saved harmless for any thing by them done, or omitted to be done, in obedience to or compliance with any such law before the time at which they shall have had, or with due care and watchfulness might have had, notice of the repeal thereof.

15. It shall be lawful for any person or persons to present an appeal to his Majesty in Council against any such law or regulation so registered and published as aforesaid, at any time within eight calendar months from the publication of the same after it has been fully established as a law, and it shall be lawful for his Majesty in Council at any time to repeal the same.

16. Nothing herein contained shall extend, or be construed to extend, to the affecting in any way of the right or power of the Imperial Parliament to make laws for the British territories in the East-Indies, and for all the inhabitants thereof; and it is expressly declared, that a full, complete and constantly existing right and power is intended to be reserved, and is hereby reserved to the Imperial Parliament of the United Kingdom of Great Britain and Ireland, to control, supersede, or prevent by Act of Parliament all proceedings and acts whatsoever of the said Legislative Council, and to repeal and annul at any time any act, law or regulation whatsoever by the said Councils at any time made or done, and in all respects to legislate for the British territories in the East-Indies, and the inhabitants thereof, in as full and ample a manner as if this Act had not been passed; and the better to enable the Imperial Parliament to exercise at all times such authority, power and right, the President of the Board of Commissioners for the affairs of India shall, once in every Session of Parliament, lay before both Houses of Parliament the laws and regulations of the said Legislative Councils, which since the foregoing Session may have been transmitted to him or to the Secretary of the said Board as hereinbefore is provided; and once in every period of years the said Legislative Councils shall transmit to the President of the Board of Commissioners, and the said President shall lay before both Houses of Parliament the whole of the subsisting laws theretofore made by the said Councils, and then remaining unrepealed and in force; and the said Councils, before such transmission of the same, shall cause the same to be methodically and systematically arranged, and shall annex thereto such tables, indexes, glossaries, and other explanatory documents and materials as may be conducive to the true understanding of the same.

17. All laws and regulations which shall be made and published by the said Legislative Councils in the manner and form hereinbefore provided, as long as they shall remain unrepealed and unaltered shall be of the same force and effect within and throughout the British territories in the East-Indies, and every part thereof, as any Act of the Imperial Parliament is, would or ought to be within the same territories, and shall

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be taken notice of by all Courts of Justice whatsoever within the same territories, and in every part thereof, in the same manner as any public Act of Parliament would and ought to be taken notice of, without being specially pleaded and put in evidence.

18. Nothing herein contained shall in any way restrict or affect the powers of any Governor-General in Council, or Governor in Council, in any other respect than that of the making of laws and regulations.

(Signed) **CHARLES EDWARD GREY,**  
**EDWARD RYAN.**

October 13, 1830.

(Signed) **CHARLES EDWARD GREY,**  
**EDWARD RYAN.**

A true copy :

(Signed) **HOLT MACKENZIE,**  
Secretary to the Government.

No. 32.

No. 24, of 1830.

LETTER from J. Thomason, Esq., Officiating Deputy Secretary to Government, to P. Auber, Esq., Secretary to the Court of Directors, transmitting further Communication received from the Judges of the Supreme Court of Judicature at Fort William.

(Territorial Department; Revenue.)

SIR :

Fort William, 28th December 1830.

With reference to the concluding paragraph of a despatch addressed to the Honourable the Court of Directors from this Department, under date the 14th October last, I am directed by the Vice-President in Council to transmit Copy of a further communication received from the Judges of the Supreme Court of Judicature at Fort William in Bengal, with its Enclosure, explanatory of their sentiments on the existing system of law and government in India, and the changes contemplated by the institution of a Legislative Council.

2. The papers connected with the subject having already been forwarded to the Honourable Court, with a full explanation of the views of this Government, the Vice-President in Council has not deemed it necessary to offer any observations on the present occasion.

I have the honour to be, Sir, your most obedient servant,

(Signed) **J. THOMASON,**  
Officiating Deputy Secretary to Government.

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Bengal  
Government  
to the Court of  
Directors.



( Fort William, Territorial Department. )

ABSTRACT of Revenue Letter, No. 24, addressed to the Secretary to the Honourable Court of Directors, dated the 28th December 1830.

FORWARDING, with reference to papers transmitted on the 14th October last, copy of a further communication received from the Judges of the Supreme Court of Judicature at Fort William in Bengal, with its Enclosure, explanatory of their sentiments on the existing system of law and government in India, and the changes contemplated by the institution of a Legislative Council.

(Signed) J. THOMSON,  
Officiating Deputy Secretary to the Government.

No. 33.

LETTER from the Judges of the Supreme Court to the Vice-President in Council ; forwarding, with their sentiments, Copy of a Letter addressed by them to the Secretary of the India Board, relative to the existing system of Law and Government in India, and the changes contemplated by the institution of a Legislative Council.

Court-House, 16th December, 1830.

HONOURABLE SIRS :

Judges of  
Supreme Court  
to Vice-President,  
with Enclosure.

1. We have been prevented by the business of the Term and Sittings from replying earlier to the Letter of the Governor-General in Council of the 9th of October.

2. We now enclose a copy of our Letter of the 16th October to the Secretary of the India Board, which was sent by the Euphrates, and of which a draft was put into the hands of the Governor-General early in October. Several alterations have been made from the draft, and towards the close a difference of opinion between ourselves is noticed, which perhaps affects the perspicuity of that part of the letter. It became necessary, however, to state that difference of our views too late to afford time for making every part of the concluding paragraphs consistent with it; and we trust that no obscurity has been produced which will render our opinions unintelligible or dubious to those who have thought upon the subject.

3. In the same spirit of frankness with which our previous correspondence has been conducted on both sides, we proceed to offer such remarks upon the second and subsequent paragraphs of the Letter of the Governor-General in Council as appear likely to conduce to a better understanding, without leading to any useless or unnecessary discussion.

4. The principles applicable to conquests by the Crown, we consider to be those which were stated by Lord Mansfield, in the case of *Campbell v. Hall*, as it is reported in the twentieth volume of Howell's State Trials; and we are not aware of any case of conquest by the Crown, either directly or by means of subordinate government, in which they would not be justly and conveniently applicable; though undoubtedly India has presented the greatest and the most difficult occasion of all that have ever occurred. Those principles

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principles acknowledged the obligation of treaties, agreements and capitulations, according to the real intent of them; from the moment that the state of war is terminated by proclamation they restore to the vanquished people their own laws, customs, and religion, the change of sovereignty; and such alterations as are especially made by the conquering power; they reserve to the King or his duly authorized representatives, and leave of making at once and upon the spot, those alterations which may be necessary, or proper which, without extending to the abridgement or abridging of any portion of the law or constitution of the United Kingdom, either it may be easily and rapidly, without delay, the laws and usages of the new territory to such an extent as may be necessary on account of them. British subjects who they have been employed in the conquest, or who may at any time be there; and they recognize the unlimited authority of the King in Parliament to make further alterations to any extent. There is nothing in these principles which is adverse to the constitution by Parliament of local legislatures, nor even to the delegation by Parliament, as in the case of India, of other powers which are sovereign in the hands of the Crown or Parliament, but which cease to be sovereign when held by delegation and under control; nor is there any thing, as it appears to us, which is at variance with the British constitution, in permitting within a newly acquired territory the existence even of a despotic form of government if it has existed there before, to which no other Indian subject but the newly conquered ones who have previously lived under it, can be made in any way liable, unless by their own choice and act; and which Parliament may at any time alter or repeal.

5. We entirely agree that the Imperial Parliament of the United Kingdom is not the place for all the details of Indian legislation, nor generally for the regulation of the internal affairs of India; and that as long as this country is governed by England, these ought always to be provided for, either by a separate body politic in England, or a local legislature in India, or rather by both of these. But we are at least as fully satisfied that it is of vital importance to England, that in matters of legislation these bodies should be the Ministers of Parliament, and absolutely subject to its authority, and that means should be secured whereby, at all times the intentions of Parliament, and when it chooses to interfere, its specific enactments, may be sure of being carried into effect. Instances, undoubtedly, might be adduced in which evils have been avoided in India by the force of circumstances having deadened the impulse of parliamentary enactments; but such necessities will be less likely to occur as India comes to be better understood, and at any rate a danger incalculably greater and worse for England would arise from the existence within it, of any power resting upon legislative bodies in India, not really dependent upon Parliament, and at whose disposal and command the revenues of India should be placed.

6. We are sorry to observe that we had not expressed the opinions which we were invited to give upon the subject of a code of laws, so as to prevent a misapprehension of our sentiments as to some points. We did not intend to suggest that the Hindu and Mahomedan laws of property in moveables should at once be abrogated, but only to point out that, except as to the succession to moveables, including the law of adoption, there is not any very important difference between those laws and our own. We hoped we had sufficiently manifested our aversion to every violent, hazardous, or hasty change. It was our intention to recommend in every thing a slow and cautious progress; and that there

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Judge of  
Supreme Court  
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should be no show of doing what it is  
strong conviction that it is so impossible to provide  
wholes of India, that it is desirable in the future  
to the subject-matter of these, should be

To him it appears that, for  
can be well enacted for some time to come; but if there were a <sup>exception for a limited district.</sup> ~~immediate~~ <sup>essential</sup> ~~regulations~~ <sup>regulations</sup> are all that  
of all part of the Government, he believes it to be quite practicable, without any violence,  
hazard or hurry, to establish and carry into execution a sound and complete system of  
law for a moderate portion of territory around the seat of Government; and that it is  
in the highest degree desirable that this object should not be postponed, because more  
cannot instantaneously be attained.

7. He cannot think that the Government would be at all placed in the position which  
is contemplated in the tenth paragraph of the Letter of the Governor-General in Council.  
His suggestion is that the existing system of law and government, with such general  
amendments as may be presently practicable and expedient, should be continued in all  
the provinces except that one which immediately surrounds the seat of Government; and  
that throughout all the wide extent of the others, British persons whilst resident there  
should lose the rights of English law, and be subject to the same regulations with the  
natives; but that in the one province adjoining the seat of Government, without any fur-  
ther adherence to English forms or rules than may be necessary to secure the complete  
subordination to the United Kingdom, a more definite law, a more perfect administra-  
tion of it, and more precise and certain rights of person and of property, than it is pos-  
sible all at once to secure to the whole of India, should be established; and established,  
not for British persons only, but for all, yet to be entirely superintended and regulated by  
a Legislative, a Judicial, and an Executive Council, the last of which would be the  
Governor-General in Council, and in each of the two first the Governor-General and one  
Councillor would preside. This surely could not afford the pretence which is appre-  
hended in the Letter of the Governor-General in Council for an indication that the  
other provinces were wilfully left to a system which it was thought unjust to apply to  
our own countrymen, and when a repugnance is so strongly expressed to the passing of  
what is called a sentence of virtual outlawry of the natives. Sir Charles Grey suggests  
that it may be remembered to have been his proposal to leave to the natives all the pro-  
tection of law which they now have or ever had, and to give them as much more as may  
be possible; to bring British persons within the regulations now applicable to the natives  
in one space, and natives within a law adapted to the British in another; and by degrees  
to extend the latter system, but with all the caution and deliberation which such an  
undertaking would require. Surely it is the continuance of the existing distinctions  
rather than this scheme, which merits, if either of them does, the appellation of an out-  
lawry of the natives, and it must at the moment have escaped the attention of the Gover-  
nor-General in Council, that the provinces subordinate to this Presidency have been for  
more than seventy years, and now are subject, but if this plan hitherto were to be  
adopted, would no longer be subject to a scheme of laws and judiciary system which it  
has been, and is still thought either unjust or inexpedient to apply to our countrymen  
who inhabit India.

2. The establishment of the district and jurisdiction of a province of Calcutta, is not a matter of trifling importance. The main point is, that some laws should be made for the province, and the system of law. The considerations which suggested the partition of the province, were chiefly its clear and distinct boundaries, but it would certainly be desirable to include the suburbs of Hooghly and perhaps more than that on the western bank of the Hooghly, even if something less than the Delta of the Ganges were to be taken on the other side, but if the Delta be left as thought to be an insuperable barrier, perhaps it would not be thought too much to add to it the district on the western bank of the Hooghly, which lies between the Hooghly and the delta line, taking the high road which runs from Keerpoy through Burdwan and Munguloot, as the western boundary, but including the two latter towns. Since 1756 Calcutta has been a British town and subject to the English law. The lapse of more than a century, the establishment for the last twenty years of a free trade, the prospect of an increasing intercourse with Europe, the altered condition of India, of the United Kingdom and of the world, would seem to be sufficient reasons for substituting now a country for a town. But the proposal of Sir Charles Grey does not involve an adherence to the system now established in Calcutta. He is well aware of the evil of attempting too closely to adhere to English forms of law and procedure in India, and of the mischief of a separation and opposition between an English and an Indian system, and of other evils which he is not the less desirous to avoid for the future, because he is unable to remove them at present. He would not wish any other distinction between the province which would be the seat of Government, and the rest of the territories, than that in the one a system of law should be established with a firmness and precision which he feels confident might be attainable there, but which he strongly apprehends would be impracticable at present for the whole of India; yet for the rest of the territories he has never contemplated the necessity of anything approaching to martial law or a "military" despotism. He would leave for the present to the rest of the territories what they now have. He would give to one district something better. If, instead of this, Calcutta should be put upon the same footing with all India, he is apprehensive that it might operate as a dissolution of all law, that no constant and steady execution of regulations, made with any fullness of detail for all India, could either be insisted on or expected, but must come to depend upon the will of the local executive power, which must itself be influenced by the infinite and fluctuating considerations of temporary convenience arising out of the vast and unsettled field of Indian Government; that neither British persons, nor any others in this country, would have anything which they could claim as of right; and that the authority of the controlling powers at home would come to be merely nominal. On the other hand, it can scarcely upon consideration be thought by the Governor-General in Council, that the proposed scheme of beginning with a single province would be either impracticable or difficult, inasmuch as it consists mainly of a restriction to a narrower sphere of that which the Governor-General in Council would attempt for the whole range of India. It can scarcely be liable to the imputation of injustice to the natives, inasmuch as it would take from them nothing which they have or ever had, but would confer on them a great deal which they have not. Sir Charles Grey will add to these considerations a statement of his belief, that it is only in this way it is at all probable that the Crown

# 1000 FIFTH APPENDIX TO THE THIRD EDITION OF THE

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Judges of  
Supreme Court  
to Vice-President,  
with Enclosure.

and Parliament would accept to the British Government at Port William, being sub-  
jected in legislative and judicial matters to the Government of the Company, without  
arrangements could be agreed upon, by which the authority of the Crown and Parlia-  
ment, in the control and direction of Indian affairs, could be rendered more  
immediate efficient and real than it at present is over-haunted.

In conclusion, we beg leave to say, that if any further communication on this point  
should be thought desirable, it will at all times give us the greatest pleasure to comply  
upon them.

We have, Sir,  
(Signed) Chas. Law. Guler  
Row. Baker

(Enclosure)

No. 34.

LETTER from the Judges of the Supreme Court to the Secretary of the Board of  
Commissioners for the Affairs of India, relative to the existing System of Law and  
Government in India.

Sir,

Court House, Calcutta, 16th October 1800.

Judges of  
Supreme Court  
to Board of  
Control,  
with Observations  
on existing  
System.

1. We have now the honour of complying to the best of our abilities with the request  
contained in your Letter of the 15th of November last.

2. To exhibit distinctly our view of the circumstances in which the Court is placed; it  
is necessary to go through a statement which we do not only fear will be tedious, but of  
which the substance must be familiar to the President and Board, yet the facts have been  
regarded in such different lights, that unless we communicate our own impressions of  
them, the foundations on which our opinions rest will be liable to be misapprehended.

3. The first East-India Company was constituted for the establishing and improving  
of a difficult and valuable trade for a limited time; and with a reservation to the Crown  
of a power to revoke the Charter when the good of the nation might require it.

4. In the reigns of William III. and Queen Anne the old Company was induced to  
surrender its charters; its corporate capacity was terminated, and its members were  
admitted into another Company which had been constituted, not by the Crown alone, but  
by Act of Parliament, and by Letters Patent of the Crown issued in pursuance of the  
Act, and a power was reserved of entirely putting an end to the United Company after  
a certain time and upon a certain notice, and upon the repayment of a sum advanced by  
the Company to the Crown.

5. The possessions of the old Company in the East-Indies were transferred for a  
valuable consideration to the new one, and they were principally the island of Bombay, a  
town and fortress at Madras, and another at Calcutta. These three places, of which the  
property was then in the United Company, or those who held under them, were plainly  
recognized by the Crown in 1726, in Letters Patent of that date, to the British settlements,  
and within the King's peace and allegiance, and the Company who accepted the Charter  
must be deemed to have been parties to it.

6. Bombay had long been severed from the Mogul empire, but Madras and Calcutta  
probably

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probably well known to the public, to the period, of the Indian Princes whose territories were situated in the neighbourhood of the factories in which they had given a property to the Company, and which they had taken possession of for their defence in times of disturbance.

7. In 1700, the Company was declared in explicit terms by the statute of the 8 Geo. II. c. 14 to be a perpetual corporation; and to be entitled as such, to continue to trade in company with other British subjects, if at any time their privilege of an exclusive trade should be terminated. There had been a previous Act in 1710, intended probably to have the same effect, but in which the language was rather obscure and uncertain.

8. The powers of political government, which had been given by the British Crown and Parliament, whether to the new Company or the old, down to the year 1767, were calculated mainly and almost entirely for the defence and protection of the three settlements above mentioned and the subordinate factories, and of the great trade of which they were the principal seats.

9. In 1757, however, in the recovery and protection of the settlement at Calcutta, an operation in which the Company were assisted by the King's forces, the abilities of Colonel Clive were so much more than equal to the occasion, that he suddenly found himself the conqueror of the whole of the rich and populous provinces of Bengal, Behar and Orissa; the capital was in his possession, and the Subahdar or Viceroy, whom he had defeated in battle, was killed by one of his own people. Colonel Clive and Admiral Watson, whilst the contest was going on, had promised a Mahomedan officer of the enemy, that if he assisted them, he should be Subahdar, and Colonel Clive accordingly made him assume the title and state of Subahdar of the three provinces, though he had no claim by any appointment of the Mogul Emperor, nor by any hereditary right, but depended entirely upon the support of Colonel Clive, whose act must have required in this case to be ratified by the British Crown; before it could be considered as standing in the way of any arrangement which the Crown or Parliament might choose to make respecting the conquest.

10. To pass over intermediate events, the Governor and Council of Fort William, on the part of the East-India Company, in February 1765, made an agreement with the successor of this Subahdar, of which the substance was, that he should have the title and rank of Subahdar and Nawab of Bengal, Behar and Orissa, but that the Company should nominate a deputy Subahdar, who should not be removable without their consent, and who should have the management of all public affairs, including the revenue and the appointment of officers in that department, but that these should be liable to be removed on the application of the Company. A British person, appointed by the Company, was to be always resident with the Subahdar, and no European was to be admitted into his service. The Subahdar agreed that the opinion of the Company should be the criterion of what would conduce to his honour and reputation; and the whole military force was put into the hands of the Company, to whom Bardwan, Midnapore and Chittagong, three districts in Bengal yielding a large revenue, had been some time before assigned for the purpose of their maintaining an army.

11. At a later period of the same year, 1765, the Company obtained from the Mogul Emperor,



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Emperor, who for some time had lost all real power in the Lower Provinces, as Orissa, which purported to be a grant in perpetuity of the whole revenue of Bengal, Bihar and Orissa, upon condition of their providing for the expenses of the Nizamut, and paying to the Emperor annually twenty-six lakhs of rupees.

12. In this manner within a short time, and before the close of the year 1765, the Company had taken into their hands all the means and forces of Government throughout Bengal, Bihar and Orissa; and as a perpetual right to the land revenue necessarily implied the right of entering and measuring the lands, and of ejecting the tenants upon failure of payment, it was absolutely incompatible with any between possession in other hands of the dominion of the country. There were then but three modes in which it seems to have been possible to contend that the Company had the right to keep the powers they had obtained: first, as filling the offices under the Mogul Emperor of perpetual Dewani and Commander of the Army in these provinces, and as holding in perpetuity the three districts of Bardwan, Midnapore and Chittagong, with all such rights annexed as the Subahdar had formerly enjoyed; secondly, as having become, in fact, themselves the sovereigns of Bengal, Bihar and Orissa; or, thirdly, that as British subjects they had obtained them by conquest and treaty, in trust for the British Crown. It would not have been reasonable that a Company which had been created by the British Parliament, and was composed for the most part of natural-born British subjects, to whom the temporary privilege had been given of excluding all other British subjects from the sea-coasts of more than half the globe, should have seized the opportunity afforded by these privileges to secure to themselves a power, either as independent potentates, or as servants of a foreign prince, which might be turned to the injury of the country to which they owed their political existence; accordingly the British Parliament, by the Act of the 13 Geo. III. c. 63, seems to have decided that the last of the three forms stated above was the only one in which the Company could be permitted to hold what they had so unexpectedly acquired; and as the circumstances were such as had not been at all contemplated when their Charter for trade was granted, under the statute of the 9 William III., and as those circumstances might vitally affect the interests and constitution of Great Britain, provisions entirely new and different were justified and required by the occasion.

13. There was one difficulty, which would not perhaps at the present day have been thought so considerable as it was then. It was imagined that the land revenue, after defraying the expenses of Government, would still yield a large surplus, and this the Company claimed as their lawful profit, and that they had a property in the revenues. On the other hand, it was contended, and indeed it was resolved by the House of Commons, that the revenues belonged to the State. This ended in a provision, which still in effect subsists, that the revenues and territorial acquisitions should remain for a limited period in the possession of the Company, without prejudice to the claim of the nation; and the matter is now of less consequence than it was formerly, since the expenses of Government, to which the territorial revenue is specifically appropriated by Act of Parliament, are such as to make it unlikely there will be any great surplus after discharging the public debt unless taxes should be imposed to a considerable extent; and even in the event of a surplus, by a temporary provision in the statute it is allotted, in ascertained shares, to the Company and the public.

14. To ascertain what the statute of the 13 Geo. III. c. 63, seems to be clear and decisive. It put an end to all question as to the dependence of the Company on the Parliament, and as to the absolute right of the British Legislature to regulate and direct the whole powers of political government which the Company might then have or thereafter acquire. The Parliament itself designated in the statute the five persons who for the next five years were to be the Governor and Council in Bengal, and who were not to be removable by the Company, reserving to the Company the power of appointing subordinate agents for the management of their commercial affairs; and although the Governor and Council were subjected to the jurisdiction of the Court of Directors, the Directors were placed, as to matters of government, under the superintendence of the High Treasurer or Commissioners of the Treasury and one of the Secretaries of State. The powers of government which the Company had before possessed under the Act and Charter of the 9 and 10 William III., and which were adapted to the management of a few stations held for the purposes of trade, were merged in those larger and more general powers which were now vested by statute in a Government calculated for the administration of the affairs of several populous and rich provinces. Since that time the corporate capacity, the right to trade, and the property of the Company, have been in law, and according to statutory provisions, a distinct and separate thing from their powers of political government. The first are secured by a Charter, which is permanent, and unless forfeited, cannot without a violation of constitutional right be annulled; their powers of government are entrusted to them for a fixed period, beyond which they depend in all respects upon the will and pleasure of the Parliament. Unfortunately these matters are not so easily distinguishable in fact, as they are in law, and they have continued to be entangled at several points, and are frequently confounded in the minds and language of those who think and speak about them; and it must be allowed, that although the Company's powers of government, whatever they were at the period of which we are speaking, were entirely subjected to the British Crown and Parliament, it was not, even in law, made quite so plain and certain how far and in what manner it was meant to assert the sovereignty of the Crown and the authority of Parliament over the provinces in which those powers were to be exercised, and especially to what extent it was intended that the powers of legislating and of administering justice, which had existed under the former governments of the country, should survive the change which had taken place. The title of the Act implied only the establishment of regulations for the affairs of the Company, not the establishment of dominion and law over the whole of a newly-acquired territory and its inhabitants; there was no formal declaration in it, even of the sovereignty of the Crown; the settlement at Fort William, and the factories and places subordinate thereto were mentioned distinctly from the provinces at large; and there were many expressions and provisions whence it might be inferred that the inhabitants of the provinces were not considered as having become British subjects, which would have been the legal consequence of the provinces having become British territory. But, on the other hand, the whole civil and military powers of Government throughout the provinces had, for some time, been in the hands of the Company; and the governments newly nominated and appointed by Parliament were directed to exercise the same, including the ordering and management of the revenue, which, as we have stated, was absolutely inconsistent with

the



the dominion of the country being in any future possession; and there is no supposition on which it can be supposed to have been intended by the British Parliament, that British persons, appointed by the King and Parliament, to exercise all the powers of Government, should exercise them in any subordination, either formal or substantial, to any other Crown than that of Great Britain itself. Since that period neither the Mogul Emperor nor the Sudder Subahdar and Nazim, have ever been permitted to do any important act of authority within Bengal, Behar or Orissa. In the course of the debates which preceded the statute, the House of Commons had resolved, with reference to the revenues and territorial acquisitions, that "all acquisitions made by treaty with foreign princes did of right belong to the State;" and by the statute they were declared to be left in the possession of a British Company by the permission and will of the British Parliament. By the Charter of Justice, which was granted under the Great Seal in the next year, 1774, writs in the King's name were directed to be issued into every part of the provinces of Bengal, Behar and Orissa; and it has never from that time until this been disputed that these writs, against certain classes of persons at least, have always been legal, and of as full force and effect in the outer borders of the provinces as in the town of Calcutta, or as in England itself. The writers, too, who have been the best qualified to pronounce an opinion upon this subject, and amongst the rest Mr. Harrington, a chief Judge of the Sudder Adawlut, who wrote and published, with the sanction of the Court of Directors, an Analysis of the Laws and Regulations of Bengal, have always dated from this statute, or from the earlier era of Clive's conquest, that sovereignty of the British Crown over Bengal, Behar and Orissa, of the present existence of which throughout the British possessions in India there cannot be any question.

15. Perhaps in these circumstances the most consistent and tenable ground on which the enactments of the statutes of the 13 Geo. III., c. 63, can be placed, is the supposition of the sovereignty of the British Crown and the authority of Parliament having been fully established by it, or by what had previously taken place; but that it was not intended to abrogate the previously existing laws of the new territories further than was expressly declared, nor all at once to abolish or preclude the powers of legislating and of administering justice, which the Company had obtained from the former governments, but only to subject these to the control and regulation and to the will of the Crown and Parliament, at the same time that means were afforded to the Indian Government of bringing the whole territories gradually into a subordination to the settlement at Fort William, and of making regulations by which, under the control of a Supreme Court of Justice, one uniform system of law and government, not repugnant to the laws of England, might ultimately be established. To leave for a time to the old forms of government a distinct existence was not only the course which the difficulties of the case seemed to point out, but it was perhaps, in some degree, required by good faith, and was recommended by considerations of humanity. It seemed to be implied in the grant by which the Dewanny had been given up, and in the agreements which the Company had made with the Subahdars whom they had set over the provinces, that for a time at least the Nizamut or Mahomedan government of the provinces should be maintained. The Crown and Parliament, though they had been no parties to the agreements, had not cancelled them, and were certainly bound in justice, if they took any benefit from them, to observe the

the conditions which might be annexed; and although the obvious intension of those who were parties to the grant of the Dewanny, and the plain meaning of the words were only that the Mogul Emperor should not be called upon for any of the expenses of the Nizamut, it might be contended, that the use of the terms "Nizamut" and "Dewanny," which were well-known offices, including the whole government, implied some retention of its Mahomedan forms and character, and under the existing arrangements with the titular Subahdar, there was a system of Mahomedan government in action in the provinces, at the head of which was placed a native, nominated by the Company as Naib Subah or Deputy Subahdar. Upon the supposition, that the statute established the sovereignty of the British Crown over the provinces, it would have followed, but for these considerations, that the existing inhabitants would have become, not naturalized, indeed, but still British subjects, though with the liberty of removing themselves and their property. Lord Mansfield's declaration of the law on this point, in the case of *Campbell against Hall*, in the very year in which the Charter of Justice was granted, must be held to be conclusive, and to have expunged the barbarous tenets of some lawyers of a former time, that a people uninstructed in the Christian religion could neither claim protection as their right, nor owe allegiance as a duty, to the British Crown. But if the Act and Charter passed upon the supposition of the Nizamut and Dewanny being maintained in their Mahomedan form, except where Parliament had expressly altered them, or might afterwards interfere to do so, those who at the time were living under the Mahomedan system of government in the provinces, might be considered as entitled, notwithstanding the territory had become British dominion, to stand in something like the same relation to the British Crown, as the European inhabitants of factories had been permitted to maintain with the Mogul Sovereign and other Indian Princes, a relation which preserved to them their character and rights, respectively of British, French, or Dutch subjects, though inhabiting the territories of a foreign Sovereign. It was no longer indeed, as it seems to us, possible to contend, that the natives born subsequently within the provinces would not be subjects of Great Britain, but they might perhaps be considered to be so by reason of their being subjects of an Indian realm which had become a dependency of the British Crown and Parliament, but which still retained, by permission of Parliament, some distinct powers of legislation, and of administering justice, as portions unabrogated of their former laws. It was the more reasonable to lean to this interpretation, because the Mahomedan and Hindu inhabitants of these provinces, like the clients under the Roman law, or the vassals of the feudal system, and indeed the common people in every other state of government in which numerous chieftains or heads of political or religious classes exist, had been accustomed to think more of their fealty to the immediate chief, upon whose land, or under whose protection or patronage they lived, than of the allegiance due to a common and supreme sovereign; the country was in a state in which the people ranged themselves under different flags, rather than according to the boundaries of territory; the Hindus and Mahomedans could not suddenly, and all at once, have been brought under an entirely new and fundamentally different system of laws without the most extreme difficulty and inconvenience; and as to the Mahomedans, there was the further consideration, that their Koran enjoined obedience to those rulers only who protected their religion. No lasting inconvenience was neces-

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cessarily connected with this view of the case, treaties among Indian Princes, unless there was some special provision in them of a more permanent character, had been for the most part considered by themselves as binding only during the lives of those by whom they were made. Subsequent experience has shewn, that the expounders of the Koran find no difficulty in reconciling the allegiance of Mahomedans with that degree of toleration and protection of their religious usages, which the British Parliament has felt no difficulty in sanctioning; and as far as it was consistent with treaty, the Parliament is supposed to have always had the power and right, whenever it might choose to interfere, of modifying and altering those remnants of Mahomedan government which it permitted to exist in a distinct state. Thus the subsequent existence of the Nizamut is reconciled with the statute of 13 Geo. III. c. 63; but is not supposed to have been left upon so stable a foundation as to have prevented it from being moulded into a more British form, when those were dead who had personal claims to insist on its continuance; and when the next generation of natives, without any abrupt offence to their prejudices and habits, might be brought more immediately under the influence of British institutions. The exercise also of certain powers by the British Government is explained, which cannot, strictly speaking, be shown to be derived from Parliament, though subsisting only by its permission, and to be exercised in subordination to its authority and will.

16. The first establishment of the Supreme Court of Judicature at Fort William was directed by the statute on which these observations have been made. The object in making them has been to explain the powers and jurisdiction which were given to the Court, and to show at the same time how imperfectly defined were the foundations on which it was placed, and by how many obscure difficulties it was surrounded. For these purposes there are still some other facts which it is necessary to revive and bear in mind. The East-India Company had very early been empowered to establish Courts, and in many cases to put in force within their settlements and factories the English laws, and a similar power was given to the new Company by the Charter of the 10 William III.; but in 1726 these Courts had been superseded, and there had been established at each of the settlements of Madras, Bombay and Calcutta, by Royal Charter, a Court consisting of a Mayor and Aldermen, for the trial of civil actions, and a Court of Oyer and Terminer, consisting of the Governor and Council, for the trial of criminal offences, and the Governor and Council were also constituted Justices of the Peace, and had continued to be so from that time. This Charter was surrendered, and a new one granted in 1753, with some alterations; but not such as to change materially the structure of the Courts as stated above. These Courts at Calcutta were acknowledged by all persons after the conquest of Clive, to be no longer sufficient for the administration of justice. Besides their powers of political government, and their rights connected with the general revenue under the grant of the Dewanny, the Company claimed the three districts of Burdwan, Midnapore and Chittagong, as entirely belonging to them, and the property also of a large zemindarry lying to the south, but beyond the boundaries of Calcutta; and they had enjoyed for themselves and their servants the privilege of trading free of duty throughout the provinces. There had been several factories and smaller stations, called Aurungs, in different parts of the provinces, where their agents and servants, and makers of salt, and weavers, and other persons employed by them, or living under their flag and protection,

protection, were collected, and whence the upper agents traversed the country in all directions : some of them were guilty of many violent and oppressive acts, and a state of the greatest disorder had ensued. It was expressly with a reference to these circumstances, to the insufficiency of the former Courts, and for a remedy of these evils, that the new Court was directed to be established ; and the statute fixed the outline of its powers and authority, which were to be more distinctly and specifically developed in a charter to be granted by the Crown in pursuance of the statute.

17. The statute provided that the Court should exercise all civil, criminal, admiralty and ecclesiastical jurisdiction ; and that it should be a Court of Oyer and Terminer and Gaol Delivery, for the town of Calcutta and factory of Fort William in Bengal, and the limits thereof and the factories subordinate thereto ; and that the charter to be granted by the Crown and the jurisdiction and powers to be thereby established, should extend to all British subjects who should reside in Bengal, Behar and Orissa, or any of them, under the protection of the Company ; and that the Court should have full power to hear and determine all complaints against any of his Majesty's subjects for any crimes, misdemeanors or oppressions, and to hear and determine any suits or actions against any of his Majesty's subjects in Bengal, Behar and Orissa, and any suit, action or complaint against any person who at the time of the cause of action arising should be employed by or in the service of the Company, or of any of his Majesty's subjects, and should hear and determine any suits and actions of any of his Majesty's subjects, any inhabitant of India, residing in Bengal, Behar and Orissa, upon any agreement in writing where the cause of action should exceed 500 Rs., and where it should be agreed that in case of dispute the matter should be determined in the Supreme Court, and that such suits or actions might be brought in the first instance before the Court, or by appeal from the sentence of any of the Courts established in the provinces. That the Governor-General and Council, and the Chief Justice and other Judges of the Supreme Court, should have full power and authority to act as Justices of the Peace for the settlement at Fort William, and the several settlements and factories subordinate thereto, and to do all things to the office of a Justice of the Peace appertaining, and for that purpose the Governor and Council were authorized and empowered to hold Quarter-Sessions at Fort William four times in the year ; that in cases of indictment or information laid or exhibited in the Court of King's Bench in England, for misdemeanors or offences committed by Governors or Judges in India, the Court of King's Bench might award a *mandamus* to the Supreme Court, requiring it to examine witnesses and receive proofs, and to issue such summons or other process as might be requisite for the attendance of witnesses ; and in case of any proceedings in Parliament touching any offences committed in India, that it should be lawful for the Lord Chancellor and Speakers of the two Houses, to issue their warrants to the Governor-General in Council, and the Judges of the Supreme Court, as the case might require, for the examination of witnesses ; and such examinations duly returned should be good and competent evidence. A like power of directing to the Supreme Court writs of *mandamus*, or commissions to take evidence, was given to all the King's Courts at Westminster in actions or suits of which the causes should have arisen in India, but an exception was made that depositions taken in this manner should not be evidence in capital cases, unless in Parliament.

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18. In stating the fuller and more express ordinances of the Charter by which, in the following year, the Court was established, it may be as well, for the sake of brevity, to pass over the authority of the Court as a Court of Equity, of Admiralty, and an Ecclesiastical Court, and to describe only its other powers and jurisdictions, namely: First that which the Justices of the King's Bench have in England by the common law, and to be exercised especially for the conservation of the peace; secondly, the hearing and determining of pleas in civil actions; thirdly, its jurisdiction as a Court of Oyer and Terminer and Gaol Delivery; and fourthly, powers to be exercised in assistance of the proceedings, criminal or civil, instituted in Parliament, or in the Superior Courts in England for causes of action or offences in India; and it ought to be borne in mind, that whatever reason there may be to suppose that the statute of the 13 Geo. III. c. 63, was somewhat imperfectly worded by reason of its being the production, not of calm leisure and clear views, but of a struggle of parties, after the attention of all had been exhausted and their conceptions disturbed by the disputes of several successive Sessions, there is no ground for thinking that the Charter itself, though its form must have depended in a great measure upon the statute, was drawn up otherwise than with great care. The case of *Campbell against Hall*, which was heard and decided in that very year, shows how much the minds of some of the principal lawyers of the time, and especially Lord Mansfield, had been engaged in those great questions which the Charter involved; and it is known that it was subjected to the inspection of Lord Thurlow, Lord Loughborough, Lord Bathurst, and Lord Walsingham, and received their corrections and amendments.

19. Justices of the Peace had been established at Madras, Bombay and Calcutta, since 1726, and the statute of the 13 Geo. III. c. 63, enacted, that the Governor-General and Council, and the Judges of the Supreme Court, should be Justices of the Peace for the settlement of Fort William and the settlements and factories subordinate thereto; and the Governor-General in Council were directed to hold Quarter-Sessions at Fort William. By the Charter which followed the statute, the Court of Quarter-Sessions and the Justices were made subject to the control of the Supreme Court for any thing done by them while sitting as a Court of Quarter-Sessions or in their capacity of Justices, in the same manner and form as the inferior Courts of Magistrates in England are by law subject to the order and control of the Court of King's Bench; and the Supreme Court was empowered to issue to them writs of *mandamus*, *certiorari*, *procedendo*, or error. By the fourth clause of the same Charter it was ordained, that the Judges of the Supreme Court should respectively be Justices and Conservators of the Peace, and Coroners within and throughout the provinces, districts and countries of Bengal, Behar and Orissa and every part thereof, and should have such jurisdiction and authority as Justices of the Court of King's Bench have within England by the common law thereof. It has not, as far as we are aware, been questioned that under these provisions there was given to the Supreme Court the same power and control over the Court of Quarter-Sessions and over any of the individuals, amongst whom was each of the Judges themselves, who were constituted Justices of the Peace, as the Court of King's Bench has over Justices of the Peace in England; nor can it reasonably be contended that the authority of the Judges in this respect was limited to the settlement at Fort William and the factories and places which had been subordinate to the settlement before Clive's conquest;

conquest; for, first, not only were the powers given in the fourth clause of the Charter expressed to be such as the Justices of the King's Bench had by common law, which, not being those of local Conservators of the Peace merely, nor such only as were possessed by the other Judges, are known to have extended wherever the King's Peace was to be preserved; but those who framed that clause of the Charter, as if to prevent the possibility of doubt, took care to employ the words "throughout the provinces and every part thereof;" words which, except by a counsel in support of his case, can never be supposed to have been heedlessly used; or to have been meant when sanctioned by the Great Seal, to be treated as an empty form by the Judges to whom the Charter was given as the text of their duties. Secondly, the principal motive which led to the establishment of the Court, was a desire to prevent the violence and oppression of which British persons and other agents of the Company were guilty in the provinces, and for the correction of which the former Courts were declared insufficient. This could not have been expected of the Court if the Judges were to have power, as Conservators of the Peace only at Fort William or in the scattered factories, and to be powerless in the interjacent spaces, whilst British persons, who were acknowledged to be independent of the Nizamut and Mahomedan laws, might range the provinces at large. If a murder was committed, or false imprisonment made in the provinces by a person amenable only to the Supreme Court, it was necessary that the Judges, as Coroners and Conservators of the Peace, should have a right of instant investigation and of affording immediate relief. Their powers would not have been adapted to the increase of territorial acquisitions, or in any way more effectual than those of the former Justices of the Peace, if they had been confined within the same bounds. Thirdly, it never has been contended that writs of *habeas corpus* to release from wrongful imprisonment may not be issued, or that they have not been lawfully issued to British persons in the provinces; and we apprehend that it is upon the fourth clause of the Charter that the power of issuing any writ of *habeas corpus* at all will be found to rest; and that in this respect at least that clause is something more than idle words, and that the powers of the Judges given to them by it, are not merely those of ordinary Justices, but such as belonged to the Justices of the King's Bench by the common law. Fourthly, it was in no way inconsistent with the supposition of the provinces being a distinct subordinate realm, that the King should appoint Conservators of the Peace there with the fullest power. It never has been questioned, that the process of the Court as a Court of Civil Pleas and a Court of Oyer and Terminer was intended, as against British persons, at least to run through every part of the provinces, and for the purpose of enforcing the attendance of witnesses; this has not been restricted to British persons, but is compulsory upon the native inhabitants, as well as others. This being the case, it would have been difficult to find any good reason for confining to narrower local bounds the powers given to the Judges for the conservation of the peace; nor has there ever been any way in which the process of the Court, in any of its several capacities, could be effectually enforced or supported, unless by a co-extensive power of preventing a riotous resistance of it. Lastly, this point seems to be placed beyond doubt by the 33 Geo. III. c. 52. s. 151, in which it is declared, that the Governor-General in Council, and the Judges of the Supreme Court, had theretofore been authorized by the law to act as Justices of the Peace

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Peace within and throughout the provinces, districts and countries of Bengal, Behar and Orissa; and since that statute, under commissions authorized by warrant of the Governor-General, but issued by the Supreme Court, and sealed with the seal thereof, there having been Justices of the Peace resident in all parts of the provinces, who are acknowledged to be, in that capacity, subject to the control of the Supreme Court, and whose proceedings may be removed into that Court by writ of *certiorari*. Supposing it then to be beyond dispute that the powers given to the Court in 1774 by the fourth clause of the Charter, were not limited to the settlement at Fort William and the subordinate factories, but extended throughout the provinces, the reasons for thinking that the native inhabitants were not exempted from them, are, first, that in that passage of the Charter no such exemption is made; secondly, that the nature of the power, and the objects of it, are absolutely incompatible with any exemption of particular classes of persons. No Conservator of the Peace at any time or place, no Justice of the Peace at present in the provinces, could make any distinction of persons in the discharge of his peculiar duties. If an affray or riot takes place, especially in the night time, it is impossible that there can be any selection of the rioters. If one of the Council or a Judge of the Court in 1775, or at any time previous to 1793, when they were the only Justices of the Peace, should have been resisted, and himself or his assistants imprisoned or maltreated by natives when he was discharging his duty as a Justice of the Peace in the provinces, even though the primary cause of his being called upon to act might have been a breach of the peace by a British person, it could not have been maintained that the Court had no power to protect him, or release him from imprisonment; and there seems to be equal reason in law, that the same power should have continued to subsist for the support and protection of those who act under the Commission of the Peace, which is issued by the Court, and whose proceedings under that commission are expressly subjected to the control of the Court. If a criminal in the provinces, amenable to the British law and to the Supreme Court, and to no other tribunal, be harboured and abetted by natives, surely they are not to set at defiance the Justice of the Peace who is to apprehend him, and the Supreme Court to whom the Justice is answerable. We are aware of its having been said, that the Charter exceeded in some particulars, and went beyond the words of the statute. We do not admit this to have been the case; but consider, on the contrary, that the directions of the statute, that the Court should exercise all criminal jurisdiction, and that the jurisdiction should extend to all the King's subjects who should reside in the provinces, implied and made it absolutely necessary that there should be a power similar to that of the Justices of the King's Bench, extending throughout the provinces; but even if this necessity had not been created by the statute, the Charter, for every purpose that was within the King's prerogative, and which was not prohibited in express terms by the statute, would not have been the less valid and effectual. Supposing the provinces to have become British dominions, then whether the statute sufficiently declared that the Judges of the Supreme Court were to be Conservators of the Peace throughout the provinces or not, it is certain that it did not constitute any other persons, so as to preclude the Crown from exercising its prerogative of entrusting that duty to the Judges. The will and intention of the Crown upon this point, was declared in very plain words in the fourth clause of the Charter, and the power there given (whether



ther it was or was not meant that there was to be any concurrent power, surviving out of the former Mahomedan government), was indicated both by the words and the nature and objects of the power, to be one which was to operate upon all within the sphere of its action, without distinction of persons.

20. A second branch of authority and jurisdiction given by Charter was that of hearing and determining all pleas, real, personal or mixed, respecting things real or personal in Bengal, Behar or Orissa, and all pleas of which the cause should accrue against the East India Company, or any of the King's subjects who should be resident within Bengal, Behar or Orissa, and against any other person who at the time of action brought, or cause of action accruing, should be directly or indirectly employed by or in the service of the Company, or any other subject of the King; and in cases in which the cause of action should exceed 500 rupees, against every other person whatsoever inhabitant of India, and residing in Bengal, Behar or Orissa, who should agree in writing, that in case of dispute the matter should be determined in the Supreme Court; and in such cases it was provided that if the suit should be brought in any of the Courts of Justice already established in the provinces, either party might appeal to the Supreme Court, which might by writ command the parties to surcease proceedings in the Provincial Court, and take upon itself the determination of the suit.

21. A third branch of jurisdiction was that of a Court of Oyer and Terminer for the town of Calcutta and factory of Fort William, and the factories subordinate thereto; and the Charter empowered the Court to try all crimes and misdemeanors committed within the town or factory, and the other factories, and to inquire, hear and determine; and award judgment and execution of, upon and against all treasons, murders, crimes, misdemeanors and oppressions committed in the provinces or countries called Bengal, Behar and Orissa, by any of the subjects of his Majesty, or any person employed by or in the service of the Company, or of any subject of his Majesty, and for this purpose to award and issue writs to the Sheriff to arrest and seize the bodies of such offenders, and to do all other necessary acts.

22. If these parts of the Charter, without a reference to those treaties, agreements and circumstances which we have before noticed, had been strictly insisted upon and rigidly enforced, it seems to us that it might have been very difficult to maintain in law, that subsequently to the 13 Geo. III. c. 63, and supposing the provinces to have become in any manner dominions of the King, there could be any person domiciled within them, unless it might be the inhabitants of the European factories, who were not to be considered for the time at least subjects of his Majesty, and consequently, according to the words of the Charter, amenable to the Supreme Court, both in civil and criminal suits; but by an indulgent construction of the Act and Charter, in conjunction with the agreements which had been made by the Company with the Native Princes, and by supposing that such parts and powers of the old governments still subsisted as were not expressly superseded by the statute or Charter, those who could be considered as living under the protection of the Nizamut or Mahomedan system of law and government over which the Naib Subah had recently been placed, seem, from the first, to have been held upon the grounds which have been already stated, to be exempted from the jurisdiction of the Supreme Court as a Court of Pleas and Court of Oyer and Terminer; but even these



were held liable to be summoned and compelled to attend the Court as witnesses, and without such a liability the Court would have been unable to perform many of the important functions expressly and unambiguously assigned to it by the Crown and the Legislature.

23. These complicated circumstances, of which we have endeavoured to present an accurate statement, could not subsist for any length of time in the indistinct form in which they were left without disturbance. Those disputes and disgraceful contests between the Governor and Council on the one side, and the Judges on the other, ensued, on which we wish to make only one observation, namely, that an impression has been created that the Judges greatly exceeded their authority as defined in the Act and Charter, but that we believe it will be found on examination that this was not the case, nor considered by the Parliament to be so; and the Act of the 21 Geo. III. c. 70, in which it was found necessary to provide an indemnity for the unlawful resistance of the Court by the Governor and Council and the Advocate-General, made no similar provision for the Judges. The misfortune appears to have been, that the Legislature had passed the Act of the 13 Geo. III. c. 63, without fully investigating what it was that they were legislating about, and if the Act did not say more than was meant, it seems at least to have said more than was well understood.

24. Some important enactments were accordingly made by the statute of the 21 Geo. III. c. 70, as to the powers and jurisdiction to be exercised by the Court in future: First, that the Court should not have any jurisdiction in any matter concerning the revenue, or acts done in the collection thereof according to the usage of the country, or the regulations of the Governor-General and Council; and it was expressly declared to be expedient that the inhabitants of the provinces should be maintained and protected in the enjoyment of all their ancient laws, usages, rights and privileges; the Governor-General and Council were declared to be a Court of Record, which might lawfully hold all appeals from the Country or Provincial Courts in civil causes, with a further appeal to his Majesty in Council in suits, of which the value should be £5,000 and upwards; that the same Court of the Governor-General and Council should hear and determine all offences, abuses and extortions in the collection of the revenue, and punish the same at discretion, provided that the punishment did not extend to death, maiming or perpetual imprisonment; and that the Governor-General and Council should have power to frame regulations for the Provincial Courts, which his Majesty in Council might disallow or amend; that no person shall be subject to the jurisdiction of the Supreme Court by reason merely of his holding land, or collecting the revenue from lands held by him, or under him; nor in any matter of inheritance or succession to land or goods, or ordinary matter of dealing or contract, by reason of his being in the service of the Company, or the Government, or of any native or descendant of a native of Great Britain, but only in actions for wrongs, or upon special agreement in writing, to submit to the decision of the Supreme Court. The Governor-General and Council were exempted from the jurisdiction of the Court for any act or order done or made by them in their public capacity; and a similar immunity was extended to those acting under such order, unless it shall extend to any British subject, in which case the jurisdiction of the Court was retained. The Governor and Council in other cases continue to be responsible to Courts

in England ; and provisions were made for the parties obtaining through the Supreme Court copies of any orders complained of, and also having the evidence in India taken by the Supreme Court. Provincial Magistrates, as well natives as British subjects, exercising judicial offices in the country Courts, were exempted from actions in the Supreme Court for wrong or injury for any judgment, decree or order of their Courts ; and the like exemption was extended to all persons acting under such orders ; and in case of an intention to bring any information in the Supreme Court against any such Officer or Magistrate for any corrupt act, a certain notice was directed to be given before the party could be arrested, or other proceedings could be taken against him. There was a proviso in the Act, that the Supreme Court should have full power and authority to hear and determine all and all manner of actions and suits against all the inhabitants of Calcutta ; but that the inheritance and succession to lands and goods, and all contracts, should be determined by Mahomedan or Hindu law respectively, where the defendant was a Mahomedan or Hindu ; that the rights of fathers and masters of families should be preserved ; that nothing done according to the law of caste within the family should be deemed a crime ; and that the process of the Court should be accommodated to the religion and manners of the natives.

25. It is deserving of remark, that in the statute, although the existence of the Provincial Courts for the determination of civil causes is noticed, and the Governor-General and Council are empowered to correct abuses in the collection of the revenue by any punishment short of death, maiming or perpetual imprisonment, there is no Provincial or Country Court of Criminal Justice mentioned ; and up to the time at least of that statute, the Supreme Court as a Court of Oyer and Terminer, and the Court of Quarter-Sessions, are the only ones recognized by statute as capable, in the Presidency of Fort William, of hearing and determining charges of crimes and misdemeanors against the law, other than abuses in the collection of the revenue. In fact, the present Nizamut Adawlut, and the whole system of Criminal Courts subordinate to it, have not been founded by a power created by the Crown or Parliament ; they were referred to in the last statute by which the Government of India was renewed, namely, the 53 Geo. III. c. 155 ; but they were formed as British Courts by regulations of the Governor-General in Council, upon and out of the still subsisting Mahomedan Criminal Courts over which the Naib Subah had presided, and they are a continuance of those Courts in a regulated form, not a new creation. In 1773 there had not been any power created by the Crown or Parliament under which, except for revenue offences, the Indian Governments could establish Criminal Courts subsequent to the Charter of the 10 Will. III., and the powers of establishing Courts given in that Charter seem to have been entirely superseded by the Charters of 1726 and 1753.

26. Since the Act of the 21 Geo. III. c. 70, the jurisdiction which the Supreme Court possessed in Bengal, Behar and Orissa has been extended over all the vast territories which are now under the Presidency of Fort William, and there have been several enactments affecting the Court in various ways ; but it is not necessary to state them seriatim. The foundations of its jurisdiction have been shown, and it appears to us : first, the Court has now by law the superintendence and control of the Commission of the Peace through-

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out every part of the provinces of the Presidency of Fort William, in the same way as the Court of King's Bench has it in England; that the power of Justices of the Peace is one which, for the most part, must of necessity be exercised without discrimination of persons, and that the superintending power of the Court is of a corresponding character; that as a branch of the power given to it by the fourth clause of the Charter for the conservation of the peace, and for the kindred object of relief against oppressions, which are immediately consequent upon breaches of the peace, the Court possesses and exercises the power of issuing writs of *habeas corpus* to relieve from false imprisonment; that this power is not locally limited to the town of Calcutta, but is co-extensive with the superintending powers of the Judges, as supreme conservators of the peace; and that inasmuch as British persons at least and natives employed by the Company or the Government, or any other British persons, are liable to be sued in the Supreme Court for trespasses, or indicted for offences committed in the provinces; and that for any corrupt act an information will lie against a judicial officer, whether native or European. It would be incongruous if a writ of *habeas corpus* might not be directed to any of these, if the act complained of should include a continuing and subsisting false imprisonment. With respect also to the natives generally who reside in the provinces under the Mahomedan law and the regulations of Government, it would be uncandid if we were not to admit, that before we saw the decision of the Privy Council upon the petition of Sir John Grant we should have said, upon a mere question of legal construction, that the Court had a right to direct a writ of *habeas corpus ad subjiciendum* to a native, for the purpose of relieving another native from false imprisonment, because we look upon this writ as a branch of the powers given by the fourth clause of the Charter, principally and especially for the conservation of the peace and other objects closely connected with it; and conceiving that those powers must generally extend in law to all classes of persons where they operate at all, we should have been at a loss to find any legal ground for restricting the use of that particular writ in a different way from the exercise of the other powers derived from the same clauses and sentence of the Charter. At the same time we would wish it to be understood, that we have never considered that in such a case the statute of Charles II. would be compulsory upon us, but that the application must be made under the fourth clause of the Charter, and upon the ground of our having a similar power to that which the Justices of the King's Bench have at common law; and as we should always have thought, that in those circumstances we should have had to exercise some discretion, we do not conceive that we should have issued the writ upon the complaint of a native against a native resident in the provinces, where there was any other lawful power competent and willing to afford more convenient relief. The decision of the Privy Council we receive with the utmost deference, and we are bound by law, and feel every inclination to regulate our proceedings by it; but it is only the more necessary for us, on this account, at a time when we are informed that an act is about to pass declaratory of the jurisdiction of the Court, to point out that questions of difficulty may arise upon that decision. If a British person, especially a Justice of the Peace, or his assistants, should be opposed, and any of them should suffer false imprisonment from a native in the provinces, is the Court without power to relieve them, when, if the party, being a British subject, should apply to the Government, and the Governor-General in Council should make

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make any order in support of the native complained of, those at least who should act under the order would be liable, as persons employed by British subjects, to the jurisdiction of the Supreme Court, by the express reservation in the 21 Geo. III. c. 70, s. 3. The jurisdiction of the Court, as a Court of Civil Pleas, since the statute of the 21 Geo. III. c. 70, extends first to the hearing and determining of all manner of actions against the inhabitants of Calcutta, and on account chiefly of the innumerable difficulties which British persons would have to encounter in pursuing their claims in the Country Courts. This term "inhabitants" has always been understood to have been intended by Parliament to comprise all who have dwelling-houses, and carry on trade in Calcutta. Secondly, the Court has jurisdiction over all actions of a transitory nature, and all of a local nature, of which the cause arises in any of the provinces of this Presidency, against any subject of the King residing in these provinces at the time of the cause of action accruing or action brought, or any person residing there, who shall have agreed in writing to submit the matter, in case of dispute, to the Supreme Court, and without any agreement against any person in the service of the Company, or of a British subject, for any wrong or injury; but the whole of this jurisdiction is subjected to exception, that the Court is not to interfere in any matter arising out of the collection of the revenue; and the terms "subjects of the King" is certainly now to be construed with a reference to the considerations before mentioned, and to the provisions in the statute of 21 Geo. III. c. 70, by which it was declared that the Mahomedans and Hindus were to have their own laws, and that there were courts in the provinces for the administration of them in civil cases, from which the appeal lay to the Governor-General in Council. The jurisdiction of the Supreme Court, as a Court of Oyer and Terminer, is established first throughout certain places within which it operates, without any distinction of persons. In practice, these have for many years been considered to be contracted to the limits merely of the town of Calcutta, and any factories which may at any time be subordinate to it, and there is a provision by statute, under which the limits of the town of Calcutta have been settled by the Governor-General in Council; but originally the local jurisdiction of the Court of Oyer and Terminer, according to the words of the statutes and charters, included at least a surrounding district, as well as all the outlying factories, and as a legal question, it is not free from uncertainty what the limits are now. Chinsurah in Bengal, and Penang, Singapore and Malacca, stand in this respect in a very singular predicament at present, which will be easily understood by a reference to the statutes which provided for the Dutch possessions that were ceded in 1824 being transferred to the Company, and when in relation to the three last-mentioned places, the fact is adverted to, that the Presidency of Prince of Wales' Island has been recently abolished by the Directors, and that the places of which it consisted have been made dependencies of Bengal, but that there is still a Charter of Justice for the Presidency uncancelled, but under which there is no body in India now who is authorized to act. Secondly, the Court of Oyer and Terminer has a power of trying all offences committed by his Majesty's subjects, or any person employed by them within the Presidency, or by any of his Majesty's subjects anywhere between the Cape of Good Hope and Straits of Magellan, but in this instance also, the term "subjects," it seems, is to be construed with nearly the same restrictions that have been noticed in speaking of the jurisdiction as a Court of Civil Pleas, although, as it has already been

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observed, the Criminal Courts in the provinces do not date their origin from any Parliamentary enactments. By the recent statute of 9 Geo. IV. c. 74, ss. 7, 8, 56, 70, provisions are made, without any distinction between native and British persons, for the trial by the Supreme Courts of particular offences whenever the offender is apprehended or found within the jurisdiction of the Court, although the offence may have been committed elsewhere. In cases of Hindus, the Court is forbidden by the 21 Geo. III. c. 70, s. 18, to treat as a crime any offence which is done within the family of the party according to the law of caste, and the same statute, by the 8th section, seems to prohibit the Court in its capacity of a Court of Criminal Justice, no less than as a Court of Civil Pleas, from having any jurisdiction, as to anything done in the collection of the revenue, according to the usage or to the regulation of the Governor-General in Council. It is not necessary to state over again the powers which are to be exercised by the Court in assistance of the Superior Courts in England, or of proceedings in Parliament; but we wish them to be borne in mind, more especially for the purpose of showing the necessity which there is, if these duties are to be required from the Court, that its process for the procuring of witnesses and other purposes should be effectual in all parts of the provinces. This necessity, indeed, is found equally in the exercise of its jurisdiction as a Court of Civil Pleas and a Court of Oyer and Terminer; and without a power to take the lands as well as the persons and goods of those who are liable to be sued in the Court, its judgments, in many cases, would require to be aided by the Government, or the Courts established in the provinces; and to make that aid effectual, it ought not to be precarious, but a matter of right. These observations, however, are applicable to the supposition of the Court continuing for the most part as at present constituted; if the alterations recommended in the latter part of this letter should be thought deserving of attention, there would be an opportunity, by means of a Legislative Council, of providing, with the sanction of the Governor-General in Council, for the execution of the process of the Court, notwithstanding any contraction of its sphere of jurisdiction. At present there are statutes of later dates than these already mentioned, which have created additional occasions for the exercise of the powers of the Court in the provinces, as for instance, in taking evidence upon Divorce Bills in the House of Lords; and the 26 Geo. III. c. 57, presents cases in which the Court would have to enforce in any part of the Presidency, by Exchequer process, the execution of judgments obtained in England. In addition also to these branches of jurisdiction, though it is necessary to abstain from stating them at length, it must not be forgotten that the Court has extensive powers, which must be exercised in the provinces, as incident to its other jurisdictions, especially that of a Court of Equity, and that of a Court for the relief of insolvent debtors.

27. Such, as far as we can conveniently state it in this letter, we conceive to be at present the power and jurisdiction of the Court according to law; and if it should be thought right, either by a declaratory statute or by new enactments, to take away any part of it, or to correct the mistaken supposition of its existence, we hope it will not be forgotten that distinct provisions ought to be made by which it may appear how the same objects are to be accomplished, and the same occasions are to be answered by some other tribunal or power. We have next to advert to various circumstances which, in some respects, have thrown doubt and obscurity upon the jurisdiction of the Supreme Court, which

which in others impede its powers, and in many make it doubtful whether the exercise of them be productive of good or evil.

28. The Court was founded with views which have never been accomplished, and many of the original provisions are necessarily ill suited to the state of things which has ensued, so different from that for which they were intended. It appears to have been thought by those who framed the statute of 13 Geo. III. c. 63, that by opening a Court of British law, and by giving to Government and the Court together a power of making regulations, all the British possessions and system of Government, and the whole people, might have been gradually brought to range themselves in subordination to that Court and Government, in a state of union; but from a train of circumstances, which need not be discussed here, the Court and Government were very soon placed in a state of opposition, and the inhabitants were studiously divided. The jurisdiction which the Court had subsequently exercised has always been essentially of a very peculiar character, and has had many difficulties inseparably connected with it. It is an exclusive personal jurisdiction as to a particular class, thinly scattered over a wide extent of country, amongst a dense population, who are considered to be themselves, for the most part, exempt from the jurisdiction, and to live under a very different system of law. In every part of these territories, nevertheless, the process of the Court must be enforced, and even lands must occasionally be seized and divided or sold, although there is an absolute prohibition against the jurisdiction being exercised in any matter of revenue, which revenue is, in fact, a share, and a very large one, in every parcel of land throughout the Presidency.

29. These difficulties are aggravated by an obscurity which has been permitted to hang about the relations in which the Indian territories and the Company stand to the Crown and Parliament. Our own view is plainly and simply that the bulk of the Indian territories must be considered as having been annexed by conquest and cession to the Crown of the United Kingdom, but subject, of course to the observance, of all treaties, capitulations and agreements, according to the real intent and meaning of them, which have attended any cession, and which still continue in force; that to a certain extent British law has been introduced, but that, on the other hand, a very large portion of the old laws of the country had been left standing, though under the administration of British persons, the leading distinction being that British law and British Courts have been introduced for British persons, and Mahomedan Courts and laws permitted to remain for Mahomedan and Hindu persons; and these Mahomedan laws and Courts have been subsequently modified by a certain legislative or regulating power, which itself also has been a continuation of the old legislative powers of the Native Government, permitted, and in some instances recognized, by Parliament. The sovereignty of the Crown of the United Kingdom we hold to be established throughout all the provinces which have been formally annexed to the Presidencies, and as an incident of the sovereignty, that the King in Council has in some cases the actual exercise, and in all the right, whenever the Crown may see fit to exercise it, of deciding upon appeals in the last resort, and superintending the administration of justice; that the Imperial Parliament has as absolute a right of legislating for all purposes as in the United Kingdom itself; but that the East-India Company, in consequence of a long chain of events, being the most convenient depository and organ of the powers which it is necessary should be in action upon the

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spot, have had the Government principally entrusted to them; and being thus put in the place of those parts of the old governments, by which the ancient and still subsisting laws and legislation of the country were wont formerly to be carried on, they exercise, through the Governors in Council and their officers, not only the functions specifically assigned to them by the Crown and Parliament, but some powers also in the administration of justice and in legislation, which, as we have already explained, are not, strictly speaking, derived from the Crown or Parliament as their origin, but are portions of the old institutions, which have been permitted by the Crown and Parliament to continue, and have been by Parliament entrusted for limited periods to the management of the Company, and recognised as subsisting in their hands. Excepting any formal questions which may arise out of the titular honours and nominal authority enjoyed by any Native Princes within the Presidencies, there are only two points on which, as far as we are aware, any positively different opinion exists. It seems to have been thought by some that the Company's powers of political government rest at present, not only upon the statutes by which they have latterly been entrusted or continued to them for limited periods, but also on those parts of the Charters of 1698 and 1726, by which they were authorized to coin money and maintain troops, and do other acts which belong purely to political government; whereas we should be of opinion that such powers of political government as were given by the Charter for the maintenance and protection of the exclusive trade, have been merged and extinguished in the larger powers which have been given by statute for the purposes of dominion, and that there cannot now be any occasion upon which those minor powers would revive, although the Charters are not on that account the less valid and effectual to secure to the Company, at all events, their corporate capacity, their property of every sort, and their right to trade in common with other British subjects. Secondly, there is a notion which, we are inclined to think, has arisen merely from the indistinct use of a particular term; and in adverting to it, we are anxious to guard against the supposition of our having experienced any difficulty from any expression of it by those with whom our duties have brought us into intercourse. But amongst those who have treated of the subject, some certainly speak of the Company as having "*succeeded*" to the powers of the old Native Governments, and seem to found a certain claim of right upon this notion of succession; whereas we apprehend that, although to a certain extent the Company does hold the place of the old governments, it is not by any succession, as distinguished from acquisition, but that, having been the instrument and agents of conquests, or the means through which cessions have been obtained, and having come into possession in that way, they have been permitted to retain it for a certain term, by the enactments of Parliament. We may, perhaps, be in error in supposing that any consequence is attached to this distinction; the subject, however, has been so little brought forward, that the circumstance of the Crown and Parliament having exercised little or no control over some parts of these judicial and legislative powers, which have survived the old government, has been followed by an indistinctness of apprehension as to the real nature of them. The President and Board will remember, that it has heretofore been made a question, whether the Company had not, what has been called, in terms not very easy to be understood, a delegated sovereignty: at other times it has been alleged that the Mogul Emperor still retained

retained a nominal and formal sovereignty. Some have suggested doubts whether the continuing possession of the Company, notwithstanding its being a creation of the British Crown and Parliament, is not a mark that the Indian territories have never yet been reduced into possession by the British Crown. It cannot be necessary to show, in detail, that any doubts upon points, such as these, wherever they may exist, or upon whatever occasions they may be stated, must be a source of embarrassment to Judges who have to issue process and execute judgment in the King's name, in all parts of the provinces, who may at any time be called upon to ascertain the rights in India, not only of British persons, but of the subjects of the Christian powers in amity with the British Crown, and who, in law, are supposed to have the control throughout all parts of the Presidency of the commission of the peace. Questions arising out of the most important statutes, such as the Navigation and Registry Acts, the Mutiny Acts and others, exist in an undecided state, and are scarcely prevented, but by management, from being brought forward for decision, which, whenever it is called for, must turn mainly upon the species of relation in which the Indian territories and the Company stand to the United Kingdom. Some of the most important regulations of the Indian Government have been made without the direct or express authority of Parliament, and are most easily justified, as being the exercise of the old legislative powers of the former governments not superseded, and therefore continuing to subsist. Some of the regulations, about 1793, were of this description. The imposition of taxes in the provinces is perhaps an instance, and it is a power which might come to be a subject of serious discussion, and, if British persons are to be admitted to hold lands throughout India, of vital importance.

30. An offspring of the uncertainty alluded to in the last section is the peculiar use which has been affixed to the terms "British subjects" in the Statutes and Charters relating to India; a source of difficulties to the Court which does and will increase. The corruption of the legal signification of these important terms, seems to have originated in the difficulty which was felt in getting over the provisions of 13 Geo. III. c. 63, and of the Charter of Justice, by which the English laws were, in words, extended in these provinces to all his Majesty's subjects. The Directors, in their letter of the 19th of November 1777, to Lord Weymouth, asserted that the natives were not British subjects; but, notwithstanding all the difficulties of the times, and that the Ministers were pressed by the calamities of the American war, this point was not acknowledged even in the statute of 21 Geo. III. c. 70, though expressions and clauses were allowed to be introduced in the statute, from which the result has been that it is impossible to say who were and who were not meant to be designated by those terms. Subsequently, as the British Governments in India proceeded in organizing the judicial system for the provinces, including Criminal Courts, it became necessary that they should describe the natives as subjects of the British Government, and as owing allegiance to it. Under all these circumstances, if the question had been raised in any English Court of law, there would have been some difficulty in maintaining that the natives did not at any rate fall under the terms "subjects of his Majesty," wherever those words occurred in statutes relating to India. A direct decision, upon that question, however, has been avoided; and to meet the difficulty, and with a view, perhaps, to other consequences, a distinction has been set up between "British subjects," and "subjects of



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the British Government ;" and it is maintained that generally where the term " subjects " occurs in the Indian statutes, it means " British subjects," and does not include those who are only subjects of the British Government. There is no stable nor sufficient foundation provided for this construction at present ; for whatever restrictions the Parliament may think it right at any time to put upon their rights as subjects, it is certain that if the case of the *post nati* of Scotland, and that of *Campbell v. Hall*, are of any authority, and if any of the Indian provinces have become British dominions, all who are born within them are British subjects according to English common law, even though the Indian territories should be so far a distinct realm as to have a separate but subordinate right of legislation, and of holding Courts for the administration of justice. The distinction between British subjects and subjects of the British Governments in India, has never, we believe, been formally declared in any Act of Parliament, but depends upon an ill-defined supposition of the continuance of the Mahomedan laws, and upon inferences to be drawn from the use of the term " British subjects," in several Statutes and Charters relating to India, especially the 21 Geo. III. c. 70, and the Charters of the Madras and Bombay Courts, and upon a fluctuating usage, so that it is quite impossible to say with any just confidence who they are who belong to the one class and who to the other. It seems to be agreed, indeed, that the terms " British subjects," as they must necessarily include all persons born in Great Britain, or whose fathers or paternal grandfathers have been born there, so they do not include any Mahomedan or Hindu natives of the Indian provinces who are not inhabitants or natives of Calcutta, Madras or Bombay, or any other place distinctly recognized as a British settlement or factory ; but between these two extremes there are many doubtful classes. Even the natives of Ireland would not necessarily fall under the terms " British subjects," as used in 21 Geo. III. c. 70, s. 10. It is understood that the lawyers of the East-India Company have been of opinion that persons born in the British colonies are not, according to the use of the term in the Indian statutes, " British subjects " by reason of their birth-place, nor unless they are descended from a British-born father or paternal grandfather. The natives of Jersey and Guernsey have not so strong a claim as those Christian persons born in Calcutta, Madras and Bombay, but not resident there ; and Hindus and Mahomedans, under similar circumstances, are liable to still more cogent doubts. Do either Hindus and Mahomedans, or Indian Christians born in the provinces, or Christian foreigners, because temporarily British subjects while domiciled in Calcutta, Madras or Bombay, so that for offences committed beyond the boundaries they would still be amenable only to the Supreme Court ? Are the native Christians or the subjects of Christian princes in amity with the Crown, who may reside in the provinces, to be classed with Mahomedans and Hindus, or with British subjects ? What is the effect of the subsisting treaties with France and other Christian States in this respect ? These and many similar questions do every now and then arise, and it is only by perpetual contrivance that they are prevented from becoming more troublesome. The statutes and Charters relating to India present various applications of the terms in question, and in several important instances the terms " subjects " is used by itself, and it is mere speculation and controversy whether the adjunct " British " is to be understood or not. These distinctions are the more embarrassing, because the continuance of the Nizamut, which afforded some sort of explanation of them in Bengal, Behar

Behar and Orissa, cannot be alleged in respect of other parts of India, many of which have come under the sovereignty of the British Crown by a course of circumstances which have left no shadow of any former sovereignty lingering behind, and which present no alternative, but that persons born there must be subjects of his Majesty in right of the British Crown, or subjects of nobody at all.

31. The circumstances which perhaps more than any other has contributed to make the jurisdiction of the Supreme Court inconvenient, and which is perpetually brought forward as making its unfitness for the duties assigned to it, is not a vice of its original constitution, but the extension of its legal authority over the immense territories, which have been subsequently added to the Presidency of Fort William. It was not, perhaps, impossible that the Court might have been made competent to exercise an effectual and salutary jurisdiction throughout all Bengal, Behar and Orissa, which comprise the whole space to which its powers at first extended, but it never could have been made convenient by any ingenuity of legislation, that its powers of original jurisdiction should be exercised even as to British persons throughout the present Presidency of Bengal, of which some parts are nearly a thousand miles distant from it, and where the means of communication are not so easy as in England; and as there has been an inclination rather to clog the powers of the Court than to invigorate them, it may easily be conceived that when called into exercise in a weak and shackled state upon so vast an area, they are at once ridiculously important, and yet very weak in the way.

32. It appears to us to be matter for regret that there has never been any plan avowed and distinctly laid down for the gradual assimilation and union of the two systems which it has been thought necessary, and which to a great extent it seems to be still necessary to maintain, for the British and the natives respectively. In 1773 there seems to have been at most only a temporary obligation to preserve any of the Mahommedan forms of Government, and they have by degrees been almost obliterated, but what has come in place of them rests partly on the old basis, and there are still two systems scarcely less average in principle than at first, working with discordant action, and within the same space. Nothing would be more unreasonable than to attempt to impose upon India generally the British laws as they exist in the United Kingdom, or even in Calcutta; but we are confident that before this time, if there had been a hearty co-operation of all parts of the Indian Governments, one uniform system, not English yet not adverse to the constitution of the United Kingdom, might have been established in some provinces, to which both British persons and natives might have accommodated themselves, and which would have been fitted at future opportunities to be extended to other districts. This would have been done, if the whole legislative and judicial powers of Government had been under one control. But this has never been the case. The regulations of the Government for the provinces, and civil causes tried in the Provincial Courts, where the matter in dispute is of a certain value, are nominally subjected to the control of the King in Council, as much as regulations which are registered in the Supreme Court, or causes heard there; but it is scarcely more than in name that this exists, and with the exception of a few appeals in civil cases, it may be said that the legislative and judicial functions of the Indian Government in the provinces, extensive and active as they are, and including the whole process of criminal law, are exercised under no other control

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than that of the Directors and the Commissioners for the affairs of India, whilst the administration of law for British persons in India is in theory independent both of the Indian Governments, the Directors and the Board, and British subjects who choose to abide at the seats of Government cannot be directly subjected to any legislation but that of Parliament, or regulations registered in the Supreme Courts. In these circumstances, it has naturally been the inclination of those who have had the principal influence in Indian affairs, to build separately upon the foundations of that system which is the most subjected to themselves, and as it were belongs to them, rather than to bring the remains of the old institutions of the country into any subordination to Courts established upon the basis of Parliamentary enactment, and in many respects certainly ill-adapted to the circumstances of the country. Thus two principles of Government have been maintained in a sort of antagonism, which thwarts and weakens each, and is not in any way advantageous to either. If the one was to prevail even to the exclusion of the other, the result must be an interference of the Imperial Legislature to reduce the Indian territories to their true relation with the United Kingdom, that of distinct, but entirely dependent dominions, with peculiar though not adverse laws, separate but entirely subordinate powers of internal legislation, and an administration of justice always liable in all its branches if not actually subject to the superintendence and control of the King in Council, or some other Court of the United Kingdom, or at least of some Court constituted by the Crown. Why should not the most convenient district that can be named in these vast territories be set apart for the purpose of forming upon this basis one harmonious system, suited to all classes of persons, and compounded of the two jarring ones which at present divide the people, debilitate the administration of justice, and harass the Government? It has been said that this would be like breaking off a part of the mass for the purpose of making experiments upon it; but every body seems to be agreed that something must be done. We disclaim all thought of proceeding otherwise than with the utmost caution, and we seem to differ from those who are adverse to the selection of one province principally in this respect, that we think it wiser to attempt the introduction of a better system upon a small scale at first, and in that place only where all the force of Government may be most readily applied in its support, and where its progress would be most immediately subjected to the presence and inspection of those who must direct it.

33. The next head of difficulties is one of which we feel considerable difficulty in speaking. But our motives, and the necessity of exhibiting the whole of the case, must be our apology for saying, that some of the inconvenience to which the Court is subjected, and some of which it is the apparent cause, are attributable to the imperfections of the Acts of Parliament and Letters Patent under which it has to act, or by which it is affected. It would seem as if, either from the intricacy of the subject, or an apprehension that difficulties would be encountered in Parliament when modifications of the powers of the Supreme Court have been desired, they have been sought not by positive and plain enactment, but by the introduction of something in an Act or Charter which, without being likely to excite too much discussion at the time, might be available afterwards as showing an intention on the part of the legislating power to make the required provision. Nothing can be more vague in most respects than the important statute

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statute of 21. Geo. III. c. 70 ; it provided that persons should not be subject to the jurisdiction of the Court for this or for that reason, but left it nearly as open to argument as it was before, whether all those must not be held liable who could be shown to be subjects of his Majesty; it left in the hands of the Government powers of general legislation, and of life and death, which it did not notice, while it specifically imparted to them limited powers of making regulations, and inflicting in certain cases punishment short of death. It employed the terms " British subjects " and " European British subjects " in such a manner, that it is impossible to say what was really meant by them ; it expressly left to the Supreme Court the determination of all suits respecting the lands of certain classes of the natives, yet forbade it to exercise jurisdiction in any matters connected with the revenue, which is a part of all land throughout all India ; and, finally, it made certain provisions for registration, which were palpably impracticable from the first, and were scarcely attempted to be carried into execution. We would rather not go through the invidious task of pointing out the indirect and inconclusive, but not therefore ineffectual provisions of later statutes ; but we can scarcely avoid to notice some of the variations which have been introduced in the Charters of the Supreme Courts at Madras and Bombay, and the doubts and difficulty which arise out of them. The Acts of Parliament which directed the issuing of these Letters Patent provided, that they should confer the same powers on the new Courts as those which were possessed by the Court at Fort William ; but notwithstanding this, the powers granted are materially different. To pass over the differences as to the appointment of Sheriffs, and the admission of barristers and attornies, it will be found that in the definition of the jurisdiction of the more recent Courts, there are words which purport to restrict their powers generally to such persons as have heretofore been described and distinguished by the appellation of " British subjects ; " whereas, as it would have seemed to us, the powers which the Justices of Peace and the Courts were to possess in the provinces as Conservators of the Peace, and as presiding over the Commission of the Peace, whether the criterion of their extent was to be the extent of those granted to the Court at Fort William, or the possibility of their being used to any good purpose, must be exercised, if exercised at all, without distinction of persons. Again, the Bombay Court is prohibited from interfering in any matter concerning the revenue even within the town of Bombay, which is directly opposed to the 53 Geo. III. c. 155, ss. 99, 100. Then all natives are exempted from appearing in the Courts at Madras and Bombay, unless the circumstances be altogether such as that they might be compelled to appear in the same manner in what is called a Native Court. This would for many purposes place the Court entirely at the disposal of the Government, who regulate the usages of the Country Courts as they please, and whether any suit arising beyond the limits of the towns of Madras and Bombay should be determined at all, or whether any offence committed there should be punished by the Court, or whether it should be able to collect evidence in aid of any proceedings in England, would come to depend entirely upon the pleasure of the Government. Whether this would be right or not is not the question ; it is inconsistent with the duties assigned to the Courts by subsisting statutes. In the clause which purports to define the Admiralty jurisdiction of the Court at Bombay in criminal cases, its powers are restricted to such persons as would be amenable to it in its ordinary jurisdiction, which is again at variance with the

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53 Geo. III. c. 155, s. 110, if it is to be understood from this passage in the Charter, that the jurisdiction was meant to be limited to such persons as have been usually described as British subjects; but it is not very clear what is to be understood by ordinary, as opposed to any extraordinary jurisdiction of the Court, and this indeed is another species of the defects which we are noticing, namely, that limitations of the jurisdiction have been thus introduced by allusion rather than plain declaration. In one way or another, sometimes by the mention of some qualification of the powers of the Court occurring in an Act or Charter, which has been afterwards insisted upon as a recognition; sometimes by a vague recognition of counter institutions, which have been already set on foot without any express authority, and which afterwards, upon the strength of the recognition, are amplified and extended; sometimes by the jurisdiction of the Supreme Court being stated in such a way as to leave it to be inferred that the *expressio unius* is the *exclusio alterius*; sometimes by provisions, which to persons unacquainted with India may have appeared to be of little consequence, but which in reality involve a great deal; sometimes when Parliament has provided that new Courts should be established upon the same footing as the old one, by something finding its way into the constitution of the new Courts, which is essentially different from the old, and would be destructive of their efficiency. In some or all of these ways the Supreme Courts have come to stand at last, in circumstances in which it is a very hard matter to say what are their rights, their duties or their use.

34. Though we attribute the principal imperfections and inconveniences of the Supreme Court to the sources which we have described, we have already intimated that there were inherent and almost insuperable difficulties connected with its original constitution, and the circumstances with which it has always had to deal; and we by no means intend to assert, that there have never been any faults on the part of those by whom the duties of it have been conducted. The application of the forms of British law to the settlement of differences amongst the Hindus and Mahomedans, even of Calcutta, is full of difficulty; the Hindu laws especially are one of those ancient systems which have existed, in a certain stage of society, all over Asia, and a great part of Europe, and of which the main spring has been the influence of the priesthood. When this has been removed, and laws, which were calculated to be maintained by persuasion, by sacerdotal influence, or religious awe, have to be enforced by means of English Courts and lawyers and the legal process of writs of execution, it is scarcely possible that the machinery should work well. This remark is peculiarly applicable to the family quarrels of the Hindus; but the inconvenience, great as it is, seems to be necessarily connected, for a time, with the marvellous position in which England is placed in relation to India. The ordinary state of a Hindu family, in respect of property, is that of coparcenary between the males; but any one member has a right to claim a partition. Upon the death of a Mahomedan, his property, including land, is shared amongst his relations, according to peculiar rules, which make it necessary, for the purpose of calculation, to consider it as subdivided into very minute portions. The mode of settling all cases of this kind in the Supreme Court is by suits in equity; and it may easily be imagined, that trouble, expense and delay must attend such proceedings, in which innumerable papers and accounts of many years standing, in three or four languages, must be produced, translated, given in evidence, and investigated, and

and in which, after all the other difficulties have been overcome, the decrees of the Court, including partitions of interests in lands, and consequently, the inspection and measurement, valuation and allotment of the lands are to be carried into execution by the European officers of the Court in the provinces, where the uncertain interests of many parties, not included in the suit, are involved in the same parcels of land; where the Court is prohibited from interfering, in any way, with a revenue which is intimately and inextricably mixed up with every piece of land; and where the Court is also regarded somewhat in the light of an intruder, or, at least, a necessary evil, by the civil officers of the Government by whom the provinces are managed. Add to this, that when once discussion has arisen in a native family, nothing can exceed the perverseness with which their disputes are carried on. The object is no longer to obtain their rights, but to ruin each other. Sometimes they will make a truce for years, and then revive their contentions with fresh zeal. At all times they are represented to be difficult to deal with as clients, and, from understanding imperfectly the proceedings of an English Court, to be obstinate and suspicious. Besides, it cannot be expected that any class of the professional persons by whom the business of the Court is to be conducted, should in general be quite equal, in all desirable qualifications, to those who exercise corresponding functions at home. It will not be supposed that we mean to make any exception, in this remark, of the higher offices, which at present are held by ourselves; but we have in view principally the conduct and management of suits involving an intercourse with native clients under circumstances which are much more difficult, and much more opposed to an accurate and beneficial exercise of the legal profession than any that occur at home. In almost all suits for partition amongst native families, there is another difficulty, from the Court having to regulate the disposition of funds appropriated to the superstitious uses of their religions. Again, some of the longest, most intricate, and expensive suits in the Court, have been occasioned by the charitable or religious bequests of Christians of the various sects which exist in India. In these, some of the Supreme Courts have been called upon to apply money to the benefit of Roman Catholic establishments at Goa, in others to Greek or Armenian Churches on Mount Lebanon, and to settle disputes between rival establishments of Capuchin Friars. A commission has been prayed to inspect the records of the Vatican. One highly important case, which long has been, and still is, before this Court, and which there is little doubt will ultimately come before the King in Council, presents the following circumstances: A Frenchman by birth, not outwardly professing any religion in particular, and who had for some time resided, and at last died at a very advanced age in the territory of Oude, which is, according to treaty, the separate dominion of a Mahomedan King, leaves great wealth, a part of which is in land; part of which at the time of the death is in France, part within the kingdom of Oude, part in the provinces or Mofussil of the Presidency of Fort William, and part within the town of Calcutta; some of the personal property is vested in public securities of the British Government in India, and some in the English funds. By his will he bequeaths legacies and landed estates to relations in France, and gives pensions for life to a set of native concubines and servants in Oude, makes large charitable bequests to the city of Calcutta, and the city of Lyons in France, involving the establishment of public schools at both places, to be continued for ever; and directs also the establishment



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of what he calls a college, but which is to be connected with a sort of caravanserai, where his tomb is to be lighted and watched, in the foreign and Mahomedan capital of Lucknow; and after providing for all these, there is likely to be a very large residue, respecting which his directions are very inexplicit, and to which, when they can be found out, the next of kin of a man who had left France in a state of poverty sixty years before, and who had no kindred in India, have a dubious claim; and there is landed property in Calcutta, to which his heir-at-law, when discovered, may also make a claim; and this heir, according to the English law, is not one of the next of kin, who are only of the half-blood. The case is not brought into the Court until the assets have been many years in the hands of a mercantile firm, and are involved in a maze of accounts; once brought before it, however, the Court cannot decline to proceed, yet is only enabled to proceed in respect of the public charities at the instance of the Advocate-General of the Company, whose official relations are in some respects calculated to embarrass his proceedings. When such circumstances may occur, and when it is recollected that the Court has no less than seven jurisdictions combined, as a Court of King's Bench, a Court of Civil Pleas, a Court of Oyer and Terminer, a Court of Admiralty, a Court of Equity, an Ecclesiastical Court and a Court for the relief of Insolvent Debtors, it will not perhaps be thought surprising, if complaints against it should sometimes arise out of the disputes of the suitors; except, however in equity cases, there is no ground for any complaint of delay in the determination of suits; nor even in equity has the delay been at any time ascribable to the Judges. There are no arrears in any causes which are before them, and there scarcely ever have been any. The heaviness of the costs in some equity suits we have no doubt is an evil, though perhaps not greater than in England; and it will not be found to arise so much out of any particular fees, as from the misconduct or miscarriage of the equity suits, attributable, in a great degree, to the difficulties which we have noticed, but arising partly no doubt in some cases from the inattention or unskilfulness of professional men, and still more, perhaps, from the waywardness of the native clients. If we were called upon to devise a remedy for such evils upon the supposition of the continuance of the present constitution and jurisdiction of the Court, we do not know that we could suggest any other than a reform of the system of equity pleading and practice, a settlement of all bills of cost at stated periods of the year, by the Judges themselves, accompanied by a judicial examination into the conduct of each suit, a division of labour and allotment of business amongst the Judges, by which a more rigid discipline, if we may use the expression, in the conduct of the whole business of the Court might be enforced, and, perhaps the establishment of a practice, by which the Judges might endeavour to arbitrate between the native suitors before they were fully committed in a suit.

35. We have now, however, in pursuance of the wish expressed in your letter to submit to the consideration of the President and Board, a general view of such arrangements as, in our opinion, would put the administration of the law in India upon a better footing. If we bring forward considerations, which at first may appear to belong rather to policy than to law, we trust it will be perceived that this is rendered necessary by the unusual circumstances of the case; for nearly all the difficulties of it arise out of a peculiar policy, by which the laws in India have been made personal in their application, instead

instead of being, as in most other parts of the world, local. This circumstance occasions unfortunately a certain difference of opinion, which will be noticed in a subsequent part of this letter, between the two who sign it. We are sensible also that by reason of political measures being thus necessarily involved in our recommendations, we run the risk of suggesting what may be at variance with views already formed, or with transcendent considerations of general policy, of which we have no information. This is a disadvantage for which we have no other help than to beg, that what we offer may be received as it is offered, in the light of very humble suggestions, tendered with much distrust of our own judgments, and with no other desire than to assist his Majesty's Ministers as far as we can in arriving at just conclusions of what is best to be done. Our observations are made upon the supposition, that India remains under the Government of the Company, subject to the control and regulation of the Crown and Parliament in all affairs of government, whether executive, judicial or legislative.

36. It appears to us to be desirable, that all the territories which are permanently annexed to any of the three Presidencies, and in which justice is administered and the revenue is collected and expended by officers of the British Government, should be declared, in the most unambiguous manner, to be dominions of the Crown of the United Kingdom, that all persons born within the same are subjects of that Crown, owe allegiance to it, and are entitled to protection from it; and that all persons residing there owe that temporary allegiance which would be due from them if resident in any other dominions of the Crown; and we have some confidence, that within the provinces which constitute the three Presidencies, there are no subsisting rights of Native Princes, which would present any real obstacle to the adoption of this measure. It is a step, however, which would not perhaps be taken by the British Parliament, if it were to be considered as securing to the countless population of India the rights of natural born British subjects. If the Legislature should not be satisfied by that exclusion from certain rights, to which all the unchristian natives would be subject as the law now stands, it might be necessary to enact, that the natives of the British territories in India shall not, by reason merely of their birthplace, be entitled, when resident within the United Kingdom, or any of the dominions of the United Kingdom other than the Indian territories, to any rights or privileges as subjects, beyond what would be allowed to the subjects of friendly foreign states, and that they should be distinguished by the name of Indian subjects of the Crown of the United Kingdom; with a proviso, that all persons born in India, whose father or paternal grandfather shall have been British subjects, and all other persons who according to law would be natural-born British subjects if born in any foreign state, shall equally be natural-born British subjects if born within the British territories in India. If such provisions would have the effect of depriving any classes of the Indian natives of rights to which they may at present be entitled as natural-born British subjects, the distinct acknowledgment of their being at least subjects and entitled to protection, and the foundation which would be laid by the provisions hereinafter mentioned for their enjoyment in a part of India of legal rights, would appear to us to be more than adequate compensation for anything which would be justly said to be taken away.

37. It is at this point that the difference of opinion to which we have already alluded



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as subsisting between us, must be noticed. Sir Edward Ryan thinks decidedly, that whatever ameliorations of the law and administration of justice are to be adopted, ought not to be limited, even at present, to what he considers to be so inconsiderable a portion of the territories annexed to this Presidency, but that it might be left to a Local Legislature to determine over what extent of territory any improved system might be established; and this opinion would apply equally to the admission of British persons to hold lands. In the whole of the preceding portions of this Letter, Sir Edward Ryan entirely concurs, and, with the exception above stated, he agrees in what follows; which, however, in consequence of that exception, must be expressed principally as the opinion of the other Judge, who recommends that a certain district around Calcutta, as the present seat of Government, should be formed into a separate province; and that for the government of this district only, there should be, to a considerable extent, a separation of the executive, judicial and legislative powers of government, by means of a Legislative Council, and a Court of Appeal or Council of Judicature being added for that purpose to the existing political body of the Governor-General in Council, within this province. All subjects of the Crown of the United Kingdom, as well British as Indian, without any distinction, might have the right of purchasing, holding and inheriting lands, and the laws throughout that district should be rendered as inviolable, and the administration of justice as regular, and the security of person and property as perfect as possible; and it is obvious that more would be possible for such a district, than either for the whole of India, or for a single town only like Calcutta. It is not meant that the English laws should be established, but that, subject to certain restrictions, a system should be adopted by the Legislative Council to the whole circumstances in which the province would be placed, and which system should secure more rights to the people, and should be more certain than any it is at present possible to give to the whole of India, which, taken altogether, constitutes a subject vast, various and unsettled, that it is scarce possible to frame any law, which, if really intended to be enforced, can be universally applicable, or which, if established to-day, may not be shown to-morrow to require modification. For such a province, the Delta of the Ganges, or the territory lying between the western or right bank of the Bhagheruttee and Hooghly River, and the eastern or left bank of the main stream of the Ganges, would be well situated and of a convenient size, and it has a peculiar advantage in a well-defined boundary; but any other portion of the adjoining country, of which the circumstances might be thought to require it, might even at present be included.

39. It might be declared, that the rest of the territories of this Presidency, although they be the dominions of the Crown, and the inhabitants be subjects thereof, yet by reason of their magnitude and great population, and the various customs and habits of the people, and the obscurity of the customary interests in land and other circumstances, they cannot for some time to come be adopted throughout their whole extent to an equally regular and fixed system of Government, and for these reasons the whole government of the same might be declared to be vested as before in the Governor-General in Council, subject to former restrictions and qualifications; and it might be provided that whenever persons should choose to abide in, traverse or enter the said territories, they should be liable to the laws and regulations in force there, and to the authority and powers

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powers of the Governor-General in Council, in like manner as any of the Indian subjects of the Crown would be, and that neither the Supreme Court nor any of the other Courts established or to be established within the provinces of Calcutta should have any jurisdiction whatsoever, or exercise any authority, powers or process whatever within any of the said territories, other than such as hereinafter are expressly and particularly mentioned; but that in all other cases whatsoever, when it should become necessary for giving effect to any decree, judgment or order of any of the said Courts, that the lands, goods or body of any person should be seized and taken upon any means or final process within the said territories; it should be done by such ways and means and in such manner and form, and according to such regulations as should be provided for that purpose by the Governor-General in Council. If British persons could be contented to inhabit the provinces upon these terms, they might be permitted to do so. The necessity of the case seems to require, as to the greater part of India, that the Governor-General and Council must have within themselves all legislative, judicial and executive powers, subject to no control but by the superior authorities in England, and it would be scarcely possible in the present state of things to make any laws or regulations for all India, which it might not become necessary the next day to disregard. But if the Parliament, clearly understanding and being prepared to adhere to this, should choose to put all the subjects of his Majesty, of whatsoever description in the provinces, upon an equal footing in relation to the law, there would not perhaps be any violent danger to the state to be apprehended, nor any oppression of the natives, which the Government might not be able, by a stern exercise of its power, to restrain. There are, however, two things which it does appear to be desirable to guard against in any general admission of British persons to the provinces: First, that of giving rise to a delusion that there are the means at present of establishing and enforcing throughout all India such an administration of law as that it might be profitable and advantageous to British persons, whether companies or individuals, to lay out money in landed estates and to engage in speculations throughout the provinces; this might be followed by great disappointment and discontent. Secondly, no opening nor pretence should be left for subsequent irritation and clamour, on the part of British persons, upon the grounds of their not enjoying the personal rights of English law. If the provinces are to be opened to them, let it be universally understood so, that no doubt may remain, nor any ground for subsequent reproach that they go to live under a despotic and imperfect but strong Government, that they carry with them no immunities or privileges but such as are enjoyed there by the natives themselves, and that it is impossible at present to give them either that security and easy enjoyment of landed property, or those ready remedies for private wrongs, or that independence of superiors which more readily constituted governments afford. A tolerable system of criminal judicature, we believe, might even at present be established throughout the greater part of India, and that at the principal stations Jury Courts might be established.

39. The Supreme Court, besides being restricted from exercising, within the territories lying beyond the boundaries of the province of Calcutta, any other jurisdiction than such as is hereinafter expressly mentioned, might likewise altogether cease to be a Court of original jurisdiction within that province, except in the cases hereinafter particularly mentioned, and the authority, powers and jurisdiction of the Court might henceforth be as

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follows: First, that within and throughout the province of Calcutta it should have a complete superintendence and control over all other Courts and Magistrates. - Secondly, that no sentence of death by any other Courts of the province should be executed without the warrant of the Supreme Court, and that it should have an original and exclusive jurisdiction as to all those offences which, for distinction, are called offences against the State, and are of a treasonable or seditious nature, if committed within the province of Calcutta. Thirdly, that it should have an original jurisdiction as a Court of Chancery as to all conveyances or devises of land or gifts, or bequests of money for charitable or religious purposes, or other permanent public objects. Fourthly, that it should have an original Admiralty jurisdiction as to all crimes maritime punishable with death, and the King's Commission of Vice-Admiralty for the trial of prize causes should be directed to the Judges of the Court; but this perhaps could not be enacted by Parliament without touching this prerogative, and must be left to the pleasure of the Crown. Fifthly, that it should be a Court of Appeal from the Courts of the province of Calcutta. Sixthly, that it should have the powers of the present Supreme Court for the collection of evidence in India in criminal prosecutions before the Parliament or the Superior Courts in England, and for giving effect in India to the judgments of those tribunals. Seventhly, that it should be lawful for the Governor-General by commission to authorize and empower any one or more of the Judges of the Supreme Court of Appeal or Members of the Council of Judicature to exercise any judicial function, either original or upon appeal, or by way of inquiry, within the territories lying beyond the boundaries of the province of Calcutta, and respecting any matters arising within the same, whenever the importance and exigency of any case might require it.

40. That a Legislative Council should be established for the province of Calcutta. Our views as to the formation of such Council have been already stated in a communication made to the Governor-General in Council. We would only add here, that, consistently with the scheme presented in our present letter, the right of legislation of the Council would be restricted to the province of Calcutta, but that it might be employed for the other territories whenever the Governor-General in Council should think it expedient. If the additional charge upon the revenue would not be an objection, the Members of the Legislative Council might be entirely distinct persons from those of the Council of Judicature or Court of Appeal; and at all events, we should propose that the Governor-General should have the right of presiding in the Legislative Council, and that nothing should be enacted, even for the province of Calcutta, without his consent; nor should we see any decisive objection against his presiding also, by appointment of the Crown, in the Council of Judicature or Court of Appeal, whichever it might be called, if it should be thought that in this way a more perfect harmony of government would be secured. Each of these bodies might perhaps be advantageously constituted of two persons, appointed by the Crown, from England, and of one of the civil servants belonging to the existing Council, and of the Governor-General himself.

41. The first duty of the Legislative Council would be to constitute subordinate Courts of Justice for the province of Calcutta; and until this should be done the Supreme Court and Country Courts must continue to exercise their respective functions. Our opinions upon this point also, of a system of Courts adapted to India, has been expressed to the Government

Government at their request; and we would only observe here, that for the province of Calcutta we conceive that below the Court of Appeal or Council of Judicature there ought to be one Provincial Court held at Calcutta, about four Zillah Courts, the town of Calcutta and its suburbs constituting of itself one Zillah, and an adequate number of Pergannah Courts, each permanently established on a fixed spot, which either should be some existing village, or would naturally become the centre of a township. All persons without exception might be by law eligible as Judges and Officers of the Courts; but in practice, one at least of the Judges of any Zillah Court ought at present to be a natural-born British subject, and in the Provincial Court all the Judges should be natural-born British subjects, and one of them should be an English barrister of some years standing. With the exception perhaps of that one person, and certainly of two of the Judges of a Court of Appeal or Members of a Council of Judicature, who ought to be appointed by the Crown, the other Judges of all the Courts within the province of Calcutta might be appointed by the Governor-General in Council. The appropriate functions of each of these Courts it would not be difficult to arrange.

42. The Governor-General and Council, as at present constituted, would retain within the province of Calcutta all their present powers, as far as they should be consistent with the new provisions; and it ought to be declared, much more plainly than it has hitherto been, that throughout the other territories they have the exercise, by themselves or through the Company's servants, of all authority, executive, legislative and judicial, subject to the direction and control of the Court of Directors and Board of Commissioners, and to the supreme power of the Crown and the Imperial Parliament. The Governor-General in Council, however, should also have the discretionary right of calling in aid the Legislative Council or Court of Appeal, and referring to them any matters arising in any part of the territories, and of appointing, upon emergencies, the members of those bodies or any other persons Commissioners to act in and for any part of the territories.

43. The basis and essential part of this plan is, that the two sorts of law and government which it seems to be necessary to maintain in India, should respectively be confined to separate local limits, instead of clashing together within the same. We consider it a radical defect, that in India the laws are not local, as in most other countries, but personal, and we would make them local. We do not mean that the system to be established around the seat of government should be exclusively British, but one adapted to all the circumstances of the country, though in complete subordination to the Crown and Parliament. The plan, if happily executed, might afford to British persons, and to any other classes of the community who should set a value upon the protection of firm laws and a regular system of Courts, the opportunity of living under them; on the other hand, it would secure the natives in the outer provinces from that annoyance which it is affirmed they have occasionally experienced from the process of the English law, and it would preclude all collision between the two sets of Courts and systems of law. In a great measure it would do away with any invidious distinctions in this country between the different classes of inhabitants. In the province of Calcutta, all without distinction would have the most important rights belonging to the inhabitants of a British settlement: in the other territories, all would be equally reduced to such as might be found

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consistent with the more despotic power, which necessity should require to be maintained there. This need not be at all more despotic than at present it is, as to those who constitute 99-100ths of the whole population: on the contrary, let it be mitigated as much as may be consistent with security; but let British persons who voluntarily place themselves under it be as much subject to it, and in the same manner, as the rest of the people with whom they mingle. Those who now, for the temporary purpose of trade, connect themselves with the cultivation of land in the interior, would continue to do so, whilst for those who should wish to settle for life in India, and to purchase durable and secure interests in land, the province of Calcutta would present a sufficient area for some years to come; and all who are acquainted with the country will acknowledge the general advantage which would result to the British inhabitants from the increase in number of places convenient for their residence even within that limited space. The province would not be so large as to make it an unreasonable expectation, that throughout that district, in which already there is every where a permanent settlement of the revenue, the Courts of Law and a Legislative Council together might be able first to ascertain, and in some degree fix, the nature of those customary interests in land, which are so great a difficulty in the way of making any property in it valuable or secure, and might provide some ready means of settling the disputes which will arise out of this sort of property as long as it subsists; and at the same time, some course might be opened by which, with the strictest regard to justice, and without any preference of the English to any other system of law, those inconvenient and barbarous forms of property, such as have at some time or other existed in almost every other country, might, as in other countries, be gradually resolved into more convenient, simple and definite ones, to the advantage of all parties. We wish it to be clearly understood, that it is not English law, but whatever law should be found best adapted to the country, that we should seek to establish, subject to certain specified exceptions and restrictions, preservative of the sovereignty of the Crown and authority of Parliament. The task of preparing, establishing and conducting of a firm system of law within the province of Calcutta, might afford as much occupation to those who now find employment in the Supreme Court, as they would lose by the alteration of its jurisdiction. The interests of religion, and the progress of education, would seem to us to be likely to be promoted by these arrangements, and the Legislative Council and Court of Appeal would constitute channels for the exercise of that control by the Crown and Parliament, within a part of India, over all legislation and administration of justice, which, if they are to remain British, must, in some way or other, be ultimately established throughout the whole territories, even though India should be made as distinct a portion of the British dominions as Ireland was before the Union, and gradually as the system should be perfected within its limited range, it might be extended to other provinces.

41. In these recommendations we beg leave to disclaim all feelings adverse to the East-India Company. Alterations heretofore have taken place in the constitution of the Company, and others no doubt will take place hereafter; but we do not foresee any circumstances in which it would not appear to us to be desirable that the main organ of government for India should be a body of Directors, resident in England, and elected by the holders of stock representing property in India, and depending mainly for its value upon

upon the prosperous condition of that country; and there is scarcely any imaginable case in which the existing Company must not almost necessarily constitute the basis of a government of that description. We regard with consideration and respect the position and interests of those by whom, under the Directors, India is for the most part actually and immediately governed. They and their connections form as it were a large family, which has claims on India, founded in a long expenditure upon it of all that is valuable in life. They only are qualified by information and experience to conduct by far the greater part of its affairs; and one of the principal points in all plans for the government ought to be the preservation of all their real interests, and the securing of their willing and cordial assistance.

45. If our suggestions should be thought deserving of further consideration, we shall be happy to enter into more complete details of what has been stated in this letter, in a very general and imperfect manner, or to communicate any information in our power respecting any other plan which may be thought preferable. We are strongly impressed, however, with the conviction that the trade with India being free, there must necessarily be a greater resort to Bengal of British persons, and a more numerous population imbued by them with British notions, than can be confined to Calcutta or its immediate neighbourhood, and that it is in the highest degree desirable to establish an uniform system of laws for all descriptions of persons in such portions of the territories, as will admit of its being easily done and firmly secured. Our opinions differ as to the extent to which this might at present be carried, and by one of us it is considered as a strong recommendation of the plan of confining the immediate change to one province, that, except as to the putting of British persons in the other territories on the same footing as the natives, it is in perfect accordance with the principles and basis of the existing arrangements. The creation of a province of Calcutta would be little more than an enlargement of the boundaries of the town; but by relieving the Supreme Court from the greater part of its original jurisdiction, and making it principally a controlling authority, and by providing on the spot an efficient legislative power, it might be hoped that a much better state of things would be established throughout the province than has ever subsisted within the town.

46. We communicated a short time ago to the Governor-General in Council a rough draft of this letter, together with other papers which had been called for in the course of a correspondence which has been going on for some time. The opinions of the Government are opposed to the plan of establishing, within any one district, a distinct system of law. Perhaps a further consideration and discussion of the subject will remove some misapprehensions on either side, and show that the views of no party are very dissimilar from the rest. At this time the town of Calcutta is under a law at least as different from the rest of the Presidency, as it has ever been intended that a province of Calcutta should be, no more inconvenience is to be apprehended from two different systems of law or government existing on the opposite banks of the Hooghly than that which at present exists, nor than that which is found to be very tolerable on those of the Rhine or the Maese. In practice it may be hoped that in this way there would be much less inconvenience than that which now is occasioned by the different systems being carried about from place to place, as appendant to the persons of the individuals of whom the several classes of the population are composed. If India indeed was an independent country,

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and a completely new system of law was to be established in it, no reasonable person would think of putting different parts of the country under opposite systems of law. But the reason of one of the Judges for thinking that this should be done at present in Bengal in the manner above stated, are, first, that it has long been one main feature of the existing system ; secondly, that although it seems to have become necessary that British persons should be more freely admitted into the country, the time has not yet come when they may be placed throughout the whole country on the same footing as the natives ; and, thirdly, if some portion of the territories be not set apart as a connecting link and rivet with the United Kingdom, there may be some reason to apprehend that the whole legislative and judicial powers of Government would assume a discretionary character over which it would be impossible to exercise in Europe any efficient control. Instead of laws there might be merely a set of loose regulations, which, from the vastness and irregularity of their subject-matter, could not for many years, by any human efforts, be made universally applicable as fixed laws, so that neither could any subject insist upon the execution of them for his protection, nor could any controlling power in the United Kingdom say when they ought or ought not to be enforced ; whereas if a limited district were set apart, a system might be maintained within it as much subject to the control of the Crown and Parliament as any English colony is, and gradually what should have taken root there might be spread over larger circles.

We are, &c.

(Signed) CHAS. EDWD. GREY.  
EDWARD RYAN.

A true copy:

(Signed) J. THOMASON,  
Officiating Dep. Sec. to the Government.

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Wuttun. See *Deccan*.

Y.

Yarn. See *Cotton*, 5, 6.

Z.

Zemindar. Most of the zemindars are rich natives, living near Calcutta; the plan of  
raising a landed gentry through their means has failed, *Mill* 3211—Connection  
between ryots and zemindars, *Mill* 3236—How far zemindars may appropriate waste  
lands, *Mill* 3264—In no way tend to the creation of a landed interest, *Mill* 3344  
—Manner in which zemindars raise mopoly, *Mill* 3585—The rent of India may be  
collected by settlement with the cultivators without the intervention of zemindars, *Mill*  
3910—Liability of zemindars, and their conduct towards ryots getting into difficul-  
ties, *Mill* 3947—Rammohun Roy's opinions. See *First Appendix*.

Zemindary Settlement. Nature of zemindary tenure, *Christian* 2083, *Mill* 3115  
—Difference between zemindar tenure and ryotwar system, *Christian* 2094—  
Nature of settlement with zemindars, *Christian* 3097—Means of improvement  
between zemindar and ryot, and revenue officers, would be to facilitate the decision

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Mode of payment by ryots and zemindars. *Muz* 3176, 3181.—General exaction of the latter. *Muz* 3182.—Instructions of the Bengal government to resist the claims of the zemindars to enhance the rate of lands cultivated with the paddy. *Muz* 3183.—Impossibility of ascertaining ryot payments previous to 1793. *Muz* 3216.—General want of registration in Bengal. *Muz* 325.—Rights of ryots have emerged in permanent settlement system. *Muz* 3274.—Permanent settlement system has acted injuriously on the people. *Muz* 3305.—Consequences arising from the secondary settlement in the Fort William Presidency. *Muz* 3339.—Advantages of. *Muz* 3341, 3342.—The operation of the secondary system unfavourable to ryots. *Muz* 3384.—Cause of the origin of the decry, or gang-harry system. *Muz* 3385, 3386.—Consequences of the ryots' rights not being defined by this system. *Muz* 3373.—Investigation of ryots' rights. *Muz* 3387.—Increase of value "has taken place in lands since the introduction of permanent settlements by an silk in. *Muz* 3391.—Comparison between ryotwar and zemindary settlement, *Calcutta Compt.*—Advantages which the ryotwar has over the zemindary settlement. *Id.* with by the *ir* 6—1873.—Rajmohun Roy's opinion on the condition of the cultivators both under the zemindary and ryotwar systems. See *First Appendix*.

In the northern areas the secondary system prevails. Estates frequently in the hands of government. *M.S. 3458*—Bad management under the holders of the zemindaries. *M.S. 3460*—Effect of the zemindary settlement generally in Madras. *M.S. 3471*.

**Sillah Judges.** The number of sillah judges could not be decreased, as the natives have distrust generally in the decisions of the native judges, *Sindoor 440, 441*. The sillah courts formerly were very inefficient to control and decide appeals from the country courts, *Sindoor 444*.

See Courts of Justice, § 4. Judges. Justice, Administration of. See also Figures in Fifth Appendix.















